

Exhibit M

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<p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al.,) 5) 6 Plaintiffs,) 7) 8 vs.) Case No. 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et) 11 al.,) 12) 13 Defendants.) 14 15 VIDEOTAPED DEPOSITION OF ANTHONY C. CARDARELLA 16 TAKEN ON BEHALF OF PLAINTIFFS 17 DECEMBER 7, 2017 18 9:01 A.M. TO 2:35 P.M. 19 BETH A. KALTENBERGER, CCR, CSR, RPR, CRR 20 21 22 23 24 25</p>	<p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al.,) 5) 6 Plaintiffs,) 7) 8 vs.) Case No. 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et) 11 al.,) 12) 13 Defendants.) 14 15 16 VIDEOTAPED DEPOSITION OF ANTHONY C. 17 CARDARELLA, produced, sworn, and examined on 18 December 7, 2017, between the hours of 9:01 a.m. and 19 2:35 p.m. of that day, at American Civil Liberties 20 Union of Missouri, 406 West 34th Street, Kansas City, 21 Missouri, before Beth A. Kaltenberger, a Certified 22 Court Reporter, Certified Shorthand Reporter, 23 Registered Professional Reporter and Certified 24 Realtime Reporter, in a certain cause now pending in 25 the United States District Court, Western District of Missouri, Central Division, wherein SHONDEL CHURCH, et al., are the Plaintiffs and STATE OF MISSOURI, et al., are the Defendants.</p>
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<p>1 INDEX 2 3 PAGE 4 DEPOSITION INFORMATION 3 5 6 APPEARANCES 4 7 8 VIDEOTAPED DEPOSITION OF ANTHONY C. CARDARELLA 9 Examination by Ms. Wilcox 6 10 Examination by Mr. Ramsey 187 11 Examination by Ms. Shipma 238 12 Further Examination by Ms. Wilcox 240 13 14 DEPOSITION EXHIBITS 15 Exhibit 5 Suggestions in Support of Writ 175 16 of Prohibition and/or Mandamus 17 18 Exhibit 14 Missouri State Public Defender 50 19 Cumulative Caseload Metrics 20 Exhibit 15 October 2, 2017 letter to 170 21 Judges from Anthony C. Cardarella 22 23 Exhibit 16 Motion to Withdraw due to 176 24 Excessive Caseload 25 26 CERTIFICATE OF REPORTER 244</p>	<p>1 APPEARANCES 2 For the Plaintiffs: 3 MS. GILLIAN R. WILCOX 4 ACLU OF MISSOURI FOUNDATION 5 406 West 34th Street 6 Suite 420 7 Kansas City, Missouri 64111 8 (816) 470-9938 9 gwilcox@aclu-mo.org 10 11 For the Defendant Missouri State 12 Public Defender: 13 MS. JACQUELINE SHIPMA 14 GENERAL COUNSEL 15 MISSOURI STATE PUBLIC DEFENDER 16 1000 West Nifong 17 Building 7, Suite 100 18 Columbia, Missouri 65203 19 (573) 526-5212 20 jacqueline.shipma@mspd.mo.gov 21 22 For the Defendants State of Missouri 23 and Governor Eric Greitens: 24 25 MR. STEVEN ALAN RAMSEY STATE OF MISSOURI ASSISTANT ATTORNEY GENERAL 221 West High Street Jefferson City, Missouri 65101 (573) 751-9167 steven.ramsey@ago.mo.gov 26 27 Court Reporter: 28 MS. BETH A. KALTENBERGER 29 CSR, RPR, CRR, CCR MO #1335, KS #1714 30 Alaris Litigation Services 31 1608 Locust Street 32 Kansas City, Missouri 64108 33 (816) 221-1160 34 www.alarislitigation.us 35 36 Videographer: 37 Mr. Christopher Wright</p>

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<p style="text-align: right;">Page 5</p> <p>1 IT IS HEREBY STIPULATED AND AGREED by and 2 between counsel for the Plaintiffs and counsel for 3 the Defendants that this deposition may be taken in 4 machine shorthand by Beth A. Kaltenberger, a 5 Certified Court Reporter, Certified Shorthand 6 Reporter, Registered Professional Reporter and 7 Certified Realtime Reporter, and afterwards 8 transcribed into typewriting; and the signature of 9 the witness is expressly reserved. 10 * * * * * 11 (Deposition commenced at 9:01 a.m.) 12 THE VIDEOGRAPHER: We're now on the 13 record. Today's date is December 7th, 2017. The 14 time is 9:01 a.m. This is the video-recorded 15 deposition of Anthony Cardarella in the matter of 16 Shondel Church, et al., versus State of Missouri, et 17 al., Case Number 17-0405-CV-C-NKL in the U.S. 18 District Court for the Western District of Missouri, 19 Central Division. This deposition is being held at 20 American Civil Liberties Union, a Missouri 21 Foundation. The reporter's name is Beth 22 Kaltenberger. My name is Chris Wright. I'm the 23 legal videographer. We're with Alaris Litigation 24 Services. 25 Will the attorneys present please</p>	<p style="text-align: right;">Page 7</p> <p>1 maybe. 2 Q. Okay. Is it safe to assume you have 3 taken depositions? 4 A. Not nearly enough, but, yes. 5 Q. Okay. Do you remember the last time 6 you were deposed? 7 A. I might have been deposed for a 8 postconviction relief hearing, in all likelihood. If 9 not, it would have been even farther back than that 10 when I would have been the deponent. I think we were 11 suing a bank, but that was not work related. 12 Q. Okay. So over five years ago? 13 A. At least, I think so. 14 Q. Okay. So you know these rules, but I 15 will very briefly go through the ground rules, partly 16 so I remember them as well. Verbal responses. 17 A. Yes. 18 Q. "Yes" or "no." We will try not to 19 interrupt each other. 20 A. Okay. 21 Q. It's probably more important for me 22 than for you. 23 Unless you're instructed not to answer 24 by your attorney, provide an answer to the question, 25 even if there is an objection. If you don't</p>
<p style="text-align: right;">Page 6</p> <p>1 introduce themselves. 2 MS. WILCOX: My name is Gillian Wilcox 3 for the plaintiffs. 4 MR. RAMSEY: Steven Alan Ramsey for 5 the State of Missouri and Governor Greitens. 6 MS. SHIPMA: Jacqueline Shipma for 7 MSPD defendants. 8 THE VIDEOGRAPHER: Will the court 9 reporter please swear in the witness. 10 ANTHONY C. CARDARELLA, 11 of lawful age, produced, sworn and examined on behalf 12 of the Plaintiffs, deposes and says: 13 EXAMINATION 14 BY MS. WILCOX: 15 Q. Mr. Cardarella. 16 A. Good morning. 17 Q. Hi. Could you state your name for the 18 record and spell your last name? 19 A. Sure. Anthony Cardarella. Last name 20 is spelled C-A-R-D-A-R-E-L-L-A. 21 Q. Thank you. Have you ever been deposed 22 before? 23 A. Yes. 24 Q. How many times, do you think? 25 A. Oh, probably no more than a handful,</p>	<p style="text-align: right;">Page 8</p> <p>1 understand a question, let me know. I will do my 2 best to rephrase or we will move on. 3 If you need a break -- if anyone needs 4 a break, just let us know, but make sure it's not 5 when a question is pending. 6 A. Okay. 7 Q. Did you review any documents in 8 preparation for today's deposition? 9 A. I took -- I began to take another look 10 at the petition. I wasn't able to finish it 11 entirely, but I think I have -- once I received it 12 much earlier, I probably read the entire thing, I 13 think. 14 Q. Okay. 15 A. But in terms of prep for the 16 deposition, I would have reviewed portions of the 17 petition. 18 Q. Did you look at anything else? 19 A. Not in preparation for this 20 deposition, no. 21 Q. Did you bring any documents with you 22 today? 23 A. Not with me. 24 Q. And besides your attorney, Ms. Shipma, 25 have you talked to anyone else or met with anyone</p>

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<p style="text-align: right;">Page 9</p> <p>1 else in preparation for today's deposition?</p> <p>2 A. Other than telling people I was going</p> <p>3 to be deposed by the ACLU, I don't believe there's</p> <p>4 anything in addition to that.</p> <p>5 Q. Okay. And who would you have told?</p> <p>6 A. Oh, probably a long list of people.</p> <p>7 My co-manager would have been one of them, probably</p> <p>8 secretaries in terms of having to cancel things that</p> <p>9 were over-calendared. I'm sure I told my wife. The</p> <p>10 list is probably longer than that, but, really, it's</p> <p>11 inconsequential. I didn't tell anybody at a retail</p> <p>12 store or anything.</p> <p>13 Q. Okay. We'll talk about education and</p> <p>14 employment. Tell me about your current employment,</p> <p>15 where you work, your title, and how long you've been</p> <p>16 there.</p> <p>17 A. Okay. My title is district defender.</p> <p>18 I'm employed by the Missouri State Public Defender</p> <p>19 Trial Division. My office is physically located at</p> <p>20 234 West Shrader in Liberty, Missouri. We cover more</p> <p>21 counties than the county that that resides, which is</p> <p>22 Clay.</p> <p>23 And if there was more to that</p> <p>24 question, I've already forgotten it.</p> <p>25 Q. How long have you been the district</p>	<p style="text-align: right;">Page 11</p> <p>1 back. When I returned, I was into management.</p> <p>2 Q. Okay. So let's talk a little bit,</p> <p>3 then, about what other roles you have been in with</p> <p>4 MSPD before you were district defender.</p> <p>5 A. Okay. That would have been my first</p> <p>6 approximate five years with the public defender</p> <p>7 system. I began in appellate/post-conviction relief</p> <p>8 where I did three years and two weeks, not that</p> <p>9 anyone was counting, before I transferred over into</p> <p>10 the trial division. And both of those were in the</p> <p>11 Kansas City, Missouri location. I remained, like I</p> <p>12 said, just shy of five years before I went with the</p> <p>13 law firm.</p> <p>14 Q. And when you came back from the law</p> <p>15 firm, what position did you start in?</p> <p>16 A. After two years with the law firm, I</p> <p>17 returned to the public defender system as a manager,</p> <p>18 district defender in Area District 5, Buchanan</p> <p>19 County, St. Joseph, Missouri, where I remained for</p> <p>20 about six or seven years.</p> <p>21 Q. And from that position, did you take</p> <p>22 the position in District 7 as the district defender?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And what district is Kansas</p> <p>25 City?</p>
<p style="text-align: right;">Page 10</p> <p>1 defender?</p> <p>2 A. You know, I was trying to think about</p> <p>3 that this morning because I figured that would be one</p> <p>4 of the questions. I'm going to say around 15 years,</p> <p>5 but that's an estimate.</p> <p>6 Q. And does your district have a number?</p> <p>7 A. 07.</p> <p>8 Q. Do you also call it Area 7 sometimes?</p> <p>9 A. I think the system does, yes.</p> <p>10 Q. Okay. So today we may refer to it as</p> <p>11 District 7 or Area 7.</p> <p>12 A. Oh, yes.</p> <p>13 Q. How long have you worked for MSPD,</p> <p>14 total?</p> <p>15 A. I started in August of 1989, and with</p> <p>16 the exception of being out of the system in private</p> <p>17 practice with a law firm for approximately 24 months,</p> <p>18 the entirety of my career since that date, time</p> <p>19 frame.</p> <p>20 Q. When was the two-year period when you</p> <p>21 were in private practice?</p> <p>22 A. I was with -- I started in August of</p> <p>23 1989. I was with the system for four years and 11</p> <p>24 months. I know that because I didn't plan my vesting</p> <p>25 very well. I was away for 24 months and then came</p>	<p style="text-align: right;">Page 12</p> <p>1 A. 16.</p> <p>2 Q. So you worked at three different</p> <p>3 districts?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. Trial and appellate in Kansas City.</p> <p>7 Just trial in Areas 5 and 7.</p> <p>8 Q. Okay.</p> <p>9 A. As management.</p> <p>10 Q. And not as management in Kansas City</p> <p>11 in the appellate and trial?</p> <p>12 A. Never.</p> <p>13 Q. Is there a central office at MSPD?</p> <p>14 A. Yes. The central office is now in</p> <p>15 Columbia, Missouri, as I understand it.</p> <p>16 Q. And who runs that office?</p> <p>17 A. Our director, Michael Barrett.</p> <p>18 Q. Who do you report directly to as a</p> <p>19 district defender for Area 7?</p> <p>20 A. Well, we have a hierarchy of managers.</p> <p>21 Most recently the assistant trial division director</p> <p>22 retired, and the public defender system did not fill</p> <p>23 that position, so it's the head of the trial</p> <p>24 division, Ellen Blaugh, would be who I report most</p> <p>25 directly to now.</p>

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<p style="text-align: right;">Page 13</p> <p>1 Q. And you did report to the person who 2 retired? 3 A. She had an assistant, Leon Munday, who 4 had recently retired, so I would typically go to her 5 assistant, or I may just e-mail both of them. I 6 considered, obviously, both of them my managers. 7 Q. And where were their offices located? 8 A. Ellen Blaugh, St. Louis, Missouri, and 9 Leon Munday, Kansas City, Missouri. 10 Q. Okay. And do you know why the 11 positions were not filled when those people retired? 12 A. It's just the one person that retired. 13 The assistant trial division director, Leon Munday. 14 I don't have personal knowledge as to why it was. I 15 can only speculate, but I'll choose not to do that. 16 Q. What direction, if any, related to the 17 work you do as the district defender, do you receive 18 from the central office or from the people that you 19 reported directly to? 20 A. I'm not sure I understand your 21 question. 22 Q. I assume you have a lot of discretion 23 in your office for how things run, but did you 24 receive directions as to how your area -- the work 25 should be done in your area from anyone in the</p>	<p style="text-align: right;">Page 15</p> <p>1 Clinton County is a part of the 43rd Judicial 2 Circuit. There's another trial office that handles 3 the majority of the remaining counties of the 43rd 4 Judicial Circuit. 5 Now, that being said, those are our 6 three primary counties. That's where we are 7 responsible now as of fairly recent. Prior to that, 8 we were -- we probably would, at any given time, have 9 those primary counties, as well as anywhere from 10 10 to 12 to 15 additional surrounding counties, some of 11 which were not very close in proximity. 12 Q. How recently did that change? 13 A. Oh, boy. Probably inside of a year, I 14 think. 15 Q. Do you know why it changed? 16 A. My understanding is that the public 17 defender system utilized funds that were part of its 18 budget to assist trial and appellate offices dealing 19 with conflict counties. And by "conflict," that 20 necessarily or often necessarily meant that it would 21 be greater distances to cover, jails that were 22 farther away, prisons that were farther away, 23 courthouses that were farther away, defendants that 24 were farther away, so to lighten the load, if you 25 will, was the goal.</p>
<p style="text-align: right;">Page 14</p> <p>1 central office? 2 A. I do have a lot of discretion. I'm 3 not sure what you mean by -- if I spend money, if I 4 do something that I believe requires management 5 review or approval, I always contact them, so I 6 just -- in terms of day-to-day, no. 7 Q. Okay. So there are certain things 8 that you would go to them for. Those are things that 9 you understand that you would go to them for based on 10 your experience as the district defender? 11 A. That's correct. Or perhaps legal 12 advice if I know that one of them has a specialty or 13 something like that or has dealt with something 14 recently or may have as a result of them supervising 15 the rest of the state. 16 Q. For either a case you're working on or 17 someone in your office? 18 A. Correct. 19 Q. You said that District 7 has several 20 counties, one of them is Clay County? 21 A. Yes. 22 Q. What other counties are covered? 23 A. Our three primary counties remain Clay 24 County, Platte County and Clinton County. Clay 25 County is 7, Area 7. Platte County is Area 6, and</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And if those -- when you said there 2 were a lot of other counties that you had been 3 covering -- 4 A. We still do because of attrition. We 5 still will until they, by attrition, you know, those 6 cases are settled, dismissed or resolved some other 7 way. 8 Q. Okay. And if those counties are in 9 other districts, do you share the workload with 10 public defenders, say, in District 6 or in a district 11 that also covers those counties? 12 A. Well, probably the best way, easiest 13 way I can explain it would be by example. The Kansas 14 City Trial Office, Area 16, and our office, Liberty, 15 we will share. If two young men are accused of a 16 crime and they wind up being co-defendants and there 17 would thus be inherent conflicts, we would send our 18 second young man to the Kansas City office to 19 represent him. If they had two folks charged with 20 stealing a car, for example, they would send their 21 second one to us. That's the way it went on for 22 years and years and years, frankly, as long as I've 23 known it, until recently, approximately a year. 24 Q. How would that be handled now? 25 A. Now, instead of conflicting out -- and</p>

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<p style="text-align: right;">Page 17</p> <p>1 this is all electronically through a form on a 2 computer, you know, so things can be kept track of, 3 now, instead of sending it to Kansas City, we send it 4 to the transfer agent and they locate, contract 5 public defender attorneys who have -- who are 6 interested in providing criminal indigent defense to 7 people accused of crimes. 8 Q. Are these people who work for the 9 public defender system like you do or are they 10 private attorneys? 11 A. They are private attorneys who, for 12 whatever reason, have agreed to do that for whatever 13 duration and for whatever selected counties. 14 Q. Do you know who pays them or if they 15 are paid? 16 A. My understanding is the public 17 defender budget pays them. 18 Q. What judicial circuit is District 7 in 19 or if it's in multiple circuits? 20 A. I should have been more clear on that. 21 Clay County is Judicial Circuit 7 and Platte County 22 is Judicial Circuit 6. 23 Q. And Clinton County is 43rd? 24 A. 43rd, yes. 25 Q. So you now work -- your office works</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Approximately. 2 Q. Okay. 3 A. That might be slightly -- might be 4 slightly farther for Clinton County, Plattsburg, 5 Missouri. It's more rural, so not really a direct 6 route, if you will. 7 Q. Do each of those -- if you have a case 8 in one of those counties or courthouses, is it likely 9 that then your client is going to be in custody near 10 that courthouse? 11 A. Well, unfortunately, let me begin, 12 it's far more likely that our clients are going to be 13 in custody. It does not necessarily mean that 14 they're going to be in custody close to our home 15 office of Liberty, Missouri, or in the jurisdiction 16 where they're charged. 17 For example, for quite -- for quite a 18 few years the people who are charged with crimes in 19 Clinton County, where the courthouse is located in 20 Plattsburg, Missouri, are not -- they have an archaic 21 jail in the bowels of their basement which probably 22 house, I'm told, you know, a dozen, 15 people, 23 maximum. And I use that term "house" generously 24 because it's not fit for -- it shouldn't be used. 25 But because they have far, far more people accused of</p>
<p style="text-align: right;">Page 18</p> <p>1 in these three counties, you said, as of recently, 2 that's your main area? 3 A. Those have always been our main area. 4 They are now the only cases we receive indigent 5 applications from, but we still have a large amount 6 of remaining conflict counties that we have a 7 caseload with. 8 Q. Okay. How big of a geographic area is 9 it where your office currently takes cases from? 10 A. Well, Platte County is -- the 11 courthouse is not too far from the KCI airport. The 12 downtown Liberty Courthouse is where -- our Clay 13 County cases, and then Clinton County is in -- the 14 courthouse is in Plattsburg, Missouri, if that 15 describes anything. 16 Q. Maybe the easier way to do this -- so 17 your office is in Liberty? 18 A. Yes. 19 Q. Which is where the attorneys are 20 based? 21 A. Yes. 22 Q. How far of a driving distance is it to 23 get to the respective courthouses? 24 A. Approximately 30 miles. 25 Q. To each one?</p>	<p style="text-align: right;">Page 20</p> <p>1 crimes and far, far more people in custody, they farm 2 them out -- "they," Clinton County, farms them out to 3 other jurisdictions. And for the last several years 4 they farm those inmates out to another city, another 5 county, Andrew County, so we have to drive quite a 6 bit farther north to see an inmate in custody. 7 Q. Whose hearings will actually be in 8 Clinton County? 9 A. If they're lucky enough to be brought 10 to court, yes, if it's not by, for example, you know, 11 video court. 12 Q. Okay. And I'm going to touch on that 13 in a little bit. 14 A. I'm sure you are. 15 Q. So just to make sure I understand, 16 your office is not currently covering conflict cases 17 by assignment? 18 A. That's right. And we hope that to be 19 the case forever and ever, amen. 20 Q. Okay. 21 A. I don't have any confidence in that. 22 Q. And you say you hope that to be the 23 case because it is -- 24 A. It provides a miniscule amount of 25 relief.</p>

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<p style="text-align: right;">Page 21</p> <p>1 Q. Got it. As to your workload, correct?</p> <p>2 A. Yes.</p> <p>3 Q. How many attorneys work in your</p> <p>4 office?</p> <p>5 A. Including myself, a total of 12.</p> <p>6 Q. Are you currently fully staffed with</p> <p>7 12 attorneys?</p> <p>8 A. The phrase I prefer to use is we're</p> <p>9 currently fully understaffed because I don't think</p> <p>10 we're properly staffed, but, yes, of the full-time</p> <p>11 employees that are allocated to the office I manage,</p> <p>12 we're fully staffed.</p> <p>13 Q. How many attorneys do you think your</p> <p>14 office would need to be what you might call fully</p> <p>15 staffed?</p> <p>16 A. Under my definition?</p> <p>17 Q. Yes.</p> <p>18 A. Twice as many.</p> <p>19 Q. With your current caseload --</p> <p>20 A. Well, yeah.</p> <p>21 Q. -- right?</p> <p>22 A. That's presumably part of the</p> <p>23 question, yeah.</p> <p>24 Q. Is there a high turnover in your</p> <p>25 office for attorneys?</p>	<p style="text-align: right;">Page 23</p> <p>1 that with any degree of seriousness, we have</p> <p>2 approximately half of us, so I think six attorneys</p> <p>3 that are relatively -- what I would call relatively</p> <p>4 new to criminal defense.</p> <p>5 Q. When an attorney does leave your</p> <p>6 office, how are that attorney's cases transitioned to</p> <p>7 someone else?</p> <p>8 A. Well, I mean, more times than not,</p> <p>9 they're absorbed. That's not always the case. By</p> <p>10 that I mean redistributed to the existing full-time</p> <p>11 attorneys that remain. It always creates a burden,</p> <p>12 and it's an unfair reality to any of the clients that</p> <p>13 are losing their attorney.</p> <p>14 Q. I guess let's go back to the last</p> <p>15 position you filled when an attorney left. Was it</p> <p>16 easy to find someone to fill that position or was it</p> <p>17 difficult?</p> <p>18 A. Well, understand I barely had time to</p> <p>19 come here, so we really despise having to list</p> <p>20 positions and take time out of an otherwise</p> <p>21 incredibly busy week to stop everything and review</p> <p>22 applications, schedule interviews, conduct</p> <p>23 interviews, do the things that we're required to do</p> <p>24 in order to document the interviews, conduct second</p> <p>25 interviews, check references, et cetera. It's a huge</p>
<p style="text-align: right;">Page 22</p> <p>1 A. I mean, statistically, I haven't done</p> <p>2 the math. I know that we keep track of, gosh, no one</p> <p>3 left recently, and every day that that happens,</p> <p>4 that's a day to celebrate.</p> <p>5 Q. When is the last time you had to hire</p> <p>6 a new attorney?</p> <p>7 A. Probably approximately 12 months ago</p> <p>8 or so. That's the best of my recollection. Might</p> <p>9 have been slightly longer.</p> <p>10 Q. 12 is -- I don't want you to go</p> <p>11 through every one, but is there a way that you could</p> <p>12 tell me, maybe, the average level of experience the</p> <p>13 attorneys in your office have?</p> <p>14 A. Well, that changes with transition,</p> <p>15 but I can tell what -- you know, approximate what it</p> <p>16 is now.</p> <p>17 Q. Sure.</p> <p>18 A. We have probably -- I can think of one</p> <p>19 attorney with probably an extensive amount of</p> <p>20 criminal defense experience, 15 to 20 years, I'm</p> <p>21 estimating, and we have another attorney with about</p> <p>22 10 to 12 years of experience, another attorney with</p> <p>23 probably that same amount of experience, my own</p> <p>24 experience, as I've already detailed, and I think we</p> <p>25 have about -- I think the last time I thought about</p>	<p style="text-align: right;">Page 24</p> <p>1 amount of time commitment, so I'm happy when that</p> <p>2 doesn't happen. I prefer working with and attempting</p> <p>3 to train the attorneys that we presently have, but</p> <p>4 sometimes, you know, I get the notice anyway.</p> <p>5 Q. Are you solely responsible, in your</p> <p>6 position, for filling the -- if someone leaves, you</p> <p>7 do the interviewing and the hiring involved with a</p> <p>8 new attorney?</p> <p>9 A. I involve my assistant, my co-manager,</p> <p>10 to a great extent, so...</p> <p>11 Q. If you could give me an explanation of</p> <p>12 what other staff, besides the 12 attorneys, work in</p> <p>13 your Area 7 office.</p> <p>14 A. Sure. Everyone is full time. The</p> <p>15 attorneys, of course, are full-time salary, so that</p> <p>16 slightly creates a different predicament. Then we</p> <p>17 have two full-time investigators. We have one</p> <p>18 full-time legal assistant, and then we have, I</p> <p>19 believe, four office specialists that we used to call</p> <p>20 them clerks for decades, so, frankly, I can't even</p> <p>21 remember what they're called now.</p> <p>22 Q. A position that's not technically a</p> <p>23 paralegal or legal assistant, but provides support to</p> <p>24 the attorneys in the office?</p> <p>25 A. Absolutely, yes.</p>

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 Q. You've been at your office for over 2 ten years? 3 A. Yes. 4 Q. Can you talk about how the size of 5 your office has grown or not grown over that time? 6 A. I think since I came to the Liberty 7 office as the manager, transferring from the 8 St. Joe, I think the office was -- has been given, I 9 think, another two or three full-time attorneys. 10 There's been some transition with the positions over 11 the years. There was a period of time where we had 12 no investigators, and those were instead, by 13 attrition, legal assistants for a brief period, and 14 then we -- yeah, I convinced management to have some 15 investigators again. 16 Q. I think I know the answer to this, but 17 do you believe your office is sufficiently staffed? 18 A. Of course not. 19 Q. And just explain a little bit of why 20 not. 21 A. How much time do you have? Well, I 22 mean, it's a pretty simple equation of the law of 23 supply and demand. The supply is endless, it is 24 absolutely endless. As many cases that prosecutorial 25 authorities can file are filed. There's no limit.</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Well, with a ratio of 12 attorneys to 2 two investigators, I don't know that that's always 3 available. I mean, it is in theory, but get in line. 4 Q. Right. Do you ever use outside 5 investigators? 6 A. It is -- I can think of only one 7 occasion where we did something like that. It's so 8 rare. It was a unique circumstance that involved a 9 conflict. I think that's about the only time I can 10 think of having ever used that. 11 Q. And if that is used, that's an 12 additional cost, correct? Because the investigators 13 you have are on staff, and paid a salary? 14 A. That's correct. 15 Q. So if you have to go use an outside 16 investigator, then that's an additional cost that's 17 being spent on top of the salaries that are 18 already -- 19 A. It necessarily would be, sure. 20 Q. Are there social workers available? 21 A. I'm not -- honestly I don't know 22 whether they are social workers. I know the public 23 defender system had looked into a program or had 24 begun one or two interns in the system. I think one 25 may have been located in Columbia, Missouri, but I'm</p>
<p style="text-align: right;">Page 26</p> <p>1 And the prosecutorial discretion is absolutely 2 unfettered, so with that hypothetical number and with 3 the population and economy with a greater number of 4 people not being able to afford expensive attorneys, 5 our numbers have skyrocketed. And you take that, and 6 legislators that continue to pass more onerous 7 provisions, continue to make additional acts illegal, 8 create mounting and duplicative punishments and 9 extended punishments for periods of incarceration in 10 our adult prisons and juvenile facilities, the stakes 11 have just risen. And the courts rely on the public 12 defender system to put it all on their back like a 13 burro, and it's not working. 14 Q. I'm going to go through a list of 15 resources, and first just tell me whether they're 16 available to the attorneys in your office. 17 A. Okay. 18 Q. Maybe with a yes or no, and then after 19 that, we can talk about the process of how they're 20 available. 21 A. Okay. 22 Q. The ability to locate witnesses? 23 A. And this part of your question is 24 whether or not it's available to the attorneys? 25 Q. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 not certain of that. I haven't heard anything about 2 the social workers, anything recent, so I have no 3 reason to believe that we have a division of social 4 workers, none that we rely on. 5 Q. Your attorneys are not regularly using 6 social workers that are available to you? 7 A. We sometimes joke and say that we are 8 the social worker, too. 9 Q. What about experts in cases? 10 A. Assuming that an attorney had some 11 time to think about what expert, there would be a 12 mechanism by which he or she could request funds, 13 justify the use of them, because it's the taxpayers' 14 money, and then lay those things out for a funding 15 request. So it is, in theory, available. 16 Q. And I'm going to get back to the time 17 that it takes to think about that. 18 A. Sure. I just don't want any of my 19 questions and answers being taken out of context. 20 That's probably why you're not going to get a "yes" 21 or "no." 22 Q. That's fair. 23 What about taking depositions? 24 A. Same thing. We have the funding 25 available with the funding requests, specific</p>

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 details, different levels of review before the money 2 is finally released. It's available. 3 Q. Okay. In theory, again? 4 A. Everything is available, in theory, 5 because there's not time to do it, nor is there 6 sufficient staff. 7 Q. Okay. What about the use of 8 translators? 9 A. Well, we have -- of course, the court 10 pays for the translators in the courtroom, so unless 11 there's a glitch, the court should have the 12 appropriate translator there for the person accused 13 of the crime who are, quite often, in custody, more 14 often times than not. 15 Independent of the courtroom setting, 16 the attorneys in our office and our system have the 17 ability to seek funding for a translator in order to 18 communicate with their client. You know, it's 19 cumbersome, but it can be done. 20 Q. So if a defendant needs a translator 21 to speak with their attorney, that attorney, in order 22 to go meet with their client, say, in a jail, would 23 have to request the funds for a translator, schedule 24 the translator to go have the meeting; is that an 25 accurate --</p>	<p style="text-align: right;">Page 31</p> <p>1 has the time to find an expert, and makes a request, 2 is there ever a reason why that might be rejected 3 by -- if you're not making the final decision, I 4 guess, then whoever you pass it on to? 5 A. No, that's never been rejected. 6 Q. Okay. So the reason that an expert 7 wouldn't be utilized more often than not is not 8 because the request would be rejected, but because 9 there wouldn't be time for the attorney to even get 10 that far? 11 A. I thought -- I understood your 12 question to relate to translators, so I may have 13 misunderstood you, so could you state that part 14 again? 15 Q. Yes. My question was actually broad, 16 and that probably is what made it confusing. 17 A. Okay. 18 Q. So the question is if there's an 19 expense request, which is a broad question. 20 A. Sure. 21 Q. So if it helps, I can narrow it into 22 the different categories. What I'm trying to get at 23 is it ever -- is an expense request ever rejected for 24 lack of funding? 25 A. I don't think so, no. I mean, you</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Sure, sure. I mean, the attorney may 2 not do that himself or herself but, yes, that's how 3 it plays out, yes. 4 Q. Okay. 5 A. Probably ask a support staff member to 6 help do that, but the attorney -- he or she will 7 request the funding, and the funding has to be 8 approved before you can utilize the resource, of 9 course. 10 Q. Do you approve or reject expense 11 requests in your office, or does that go to someone 12 else? 13 A. I approve or review them for approval, 14 and then, you know, if they need to be clarified, 15 obviously, that occurs, and then it's passed on for 16 further review. I don't -- I'm not quite sure how 17 much monetary approval I have, independent of my 18 supervisors, but that really doesn't create much of 19 an issue, I mean, if there's a need to clarify, that 20 obviously has to happen. 21 Q. So someone other than you has the 22 final say of whether -- 23 A. On most things, yes. 24 Q. Okay. Is there ever a reason -- if an 25 attorney has the time to decide they need an expert,</p>	<p style="text-align: right;">Page 32</p> <p>1 know, there's clarification that's sought. 2 Q. Okay. 3 A. And there may be -- ultimately, my 4 supervisor has the last call on that, but I don't 5 think it's based on funding. I'm assuming it's -- I 6 assume that part of what is considered is the wise 7 use of funds, but that's speculation on my part. 8 Q. Do you encourage attorneys in your 9 office to think about the budget or the funding 10 before they make requests for the types of resources, 11 experts, taking depositions, using a translator to 12 visit a client? 13 A. I encourage them to use resources, but 14 the reality is they don't have time to do that so, I 15 mean, I'm not going to insult their intelligence. 16 Q. Okay. But you would never instruct 17 them to not request it because of budgetary reasons? 18 If they feel like they need it for a case, you would 19 support their request for it? 20 A. Oh, absolutely, sure, certainly. 21 Because if the system didn't have the funding, should 22 we reach that point, then we seek relief from the 23 courts. 24 Q. You touched on this, so I would like 25 to talk about it a little bit, the use of</p>

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<p style="text-align: right;">Page 33</p> <p>1 investigators. So there are two investigators in</p> <p>2 your office?</p> <p>3 A. Yes.</p> <p>4 Q. How does an attorney utilize the</p> <p>5 investigator? You made a comment "get in line." So</p> <p>6 if you could just kind of give maybe an example, a</p> <p>7 day-to-day example of how that plays out in your</p> <p>8 office.</p> <p>9 A. Our procedure is in order to track and</p> <p>10 monitor workload and progress in a case, action items</p> <p>11 are initiated through the software of our computer</p> <p>12 system, action item to Investigator A or Investigator</p> <p>13 B that spells out what you want him or her to do with</p> <p>14 a theoretical due date. And, obviously, the task</p> <p>15 could be multiple variety, so it may well be just</p> <p>16 running someone's criminal history or maybe trying to</p> <p>17 locate a witness. Those are going to be something</p> <p>18 that's more in flux. Sometimes it could be scene</p> <p>19 investigation, could be schedule a meeting, and then</p> <p>20 be present when the attorney is conducting an</p> <p>21 interview, for example. So, I mean, there's endless</p> <p>22 number of things that we would use an investigator</p> <p>23 for.</p> <p>24 Q. Is it up to the investigator to</p> <p>25 schedule and prioritize the requests that come in?</p>	<p style="text-align: right;">Page 35</p> <p>1 litigation practices?</p> <p>2 A. Can you tell me what you mean?</p> <p>3 Q. Is there anything in your office that</p> <p>4 maybe would be, like, a written standard litigation</p> <p>5 practice or a manual that attorneys would refer to?</p> <p>6 A. The only thing, theoretically, I could</p> <p>7 reference would be the Guidelines for Representation</p> <p>8 by the Missouri Public Defenders System, but I'm</p> <p>9 certain -- I'm virtually certain there's no attorneys</p> <p>10 who have done anything except, perhaps, glanced at</p> <p>11 that. You know, they are -- they are the ideal.</p> <p>12 They're a good set of what things that should be</p> <p>13 done, but with the workload, that's an impossibility.</p> <p>14 With the workload, i.e., especially with the existing</p> <p>15 resources, people, it's an impossibility to do</p> <p>16 everything you need to do on a case.</p> <p>17 Q. And we're going to move into workload</p> <p>18 now, so we're going to start talking more in detail</p> <p>19 about those issues.</p> <p>20 Can you describe your role as district</p> <p>21 defender, your -- this is going to be a hard question</p> <p>22 to answer, but your day-to-day responsibilities?</p> <p>23 A. Well, I'm not proud of this, but I</p> <p>24 think the first thing a lot of what the managers do,</p> <p>25 including myself, is to put out the next day's fire,</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Well, every action item is given a due</p> <p>2 date by the attorney assigned, and the way we like to</p> <p>3 do it in our office is if the -- now, it's not a</p> <p>4 perfect system because everybody is too busy, but</p> <p>5 what we like is if the due date for the action item</p> <p>6 needs to be extended or monitored, I would like for</p> <p>7 them to come to me so that we can see. I want to</p> <p>8 make sure that there's not one attorney hogging all</p> <p>9 the investigators, and there's not, but, you know,</p> <p>10 not everything can be done in two days because you</p> <p>11 think it's an emergency because, frankly, it may not</p> <p>12 be.</p> <p>13 Q. So given the capacity of the in-house</p> <p>14 investigators you have and the number of cases your</p> <p>15 attorneys have, are there times when an</p> <p>16 investigator -- where it would be helpful for them to</p> <p>17 do something, but they just can't get the task</p> <p>18 accomplished?</p> <p>19 A. Well, each investigator -- each of the</p> <p>20 two investigators I have, they're not salaried</p> <p>21 people, so they only are allowed to work 40 hours a</p> <p>22 week, so, I mean, that's -- even the most industrious</p> <p>23 folks are able to accomplish so much, so many tasks,</p> <p>24 even in the most efficient manner, in 40 hours.</p> <p>25 Q. Does your office have standard</p>	<p style="text-align: right;">Page 36</p> <p>1 and that could be practically anything.</p> <p>2 Q. Is it fair to say that you're</p> <p>3 responsible for managing your office, assigning cases</p> <p>4 and managing the budget? Are those three things</p> <p>5 you're responsible for?</p> <p>6 A. At least. And it's not an exhaustive</p> <p>7 list.</p> <p>8 Q. If you were to add other things to</p> <p>9 that list that could be generally --</p> <p>10 A. I have a caseload.</p> <p>11 Q. Yes. And we are going to get to that.</p> <p>12 A. Okay.</p> <p>13 Q. Yes. And maybe -- maybe you explained</p> <p>14 this as well as you can, but you do manage the budget</p> <p>15 in your office, to some extent? Does that fall on</p> <p>16 you or does it usually fall on someone -- a</p> <p>17 supervisor of yours?</p> <p>18 A. As I understand it, the comptroller</p> <p>19 allocates the budget to the individual offices, so</p> <p>20 we're given notice of that. I have a longstanding</p> <p>21 clerk assistant who was, frankly, doing that long</p> <p>22 before I got to the office in terms of keeping track</p> <p>23 of the money spent on the funding for professional</p> <p>24 expenses, for translators, things like that, for</p> <p>25 purchasing office supplies so, I mean, I do not -- I</p>

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<p style="text-align: right;">Page 37</p> <p>1 do not sit and subtract -- when we get an order of</p> <p>2 staples, subtract it from the budget. I don't do</p> <p>3 that, but she'll track that for me.</p> <p>4 Q. Okay.</p> <p>5 A. And does a good job of it.</p> <p>6 Q. And you've already said that your</p> <p>7 office does not have the staff it needs and the</p> <p>8 support it needs. Is there ever a time when there's</p> <p>9 not enough money to meet the demands that your office</p> <p>10 has now, if that's a question you can answer?</p> <p>11 A. I'm not sure I understand it. I mean,</p> <p>12 it could be -- that could be broadly interpreted to</p> <p>13 mean funding, and I'm sure that's not your question.</p> <p>14 Q. I understand you need more attorneys.</p> <p>15 Is there -- working in the budget that you have right</p> <p>16 now, have you ever made a request for your office of</p> <p>17 something -- like, a position to fill or something</p> <p>18 that normally is paid for, and that has not happened</p> <p>19 because of the budget?</p> <p>20 A. I'll give you an example. I mean, I</p> <p>21 could, the first thing I do every morning is shoot an</p> <p>22 e-mail that says please give me more lawyers. But I</p> <p>23 don't do that. I think that's presumed. Everyone</p> <p>24 across the state would be sending out the same</p> <p>25 e-mail, I presume. If what you're saying is have I</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. How much time would you say is spent</p> <p>2 on administrative tasks versus substantive legal</p> <p>3 work, by the attorneys?</p> <p>4 A. Again, we're talking about</p> <p>5 nonmanagement attorneys?</p> <p>6 Q. Let's talk about them separately.</p> <p>7 A. Okay.</p> <p>8 Q. Talk about the line attorneys first,</p> <p>9 nonmanagement.</p> <p>10 A. Well, they would -- they have daily</p> <p>11 time sheets, they have expense reports. Anytime any</p> <p>12 funding is requested there's a -- you know, there's a</p> <p>13 form for that, as the phrase goes, in order to make</p> <p>14 sure we're closely monitoring our expenses. There's</p> <p>15 action items for any requests that they want staff to</p> <p>16 do. You know, outside of hey, would you copy this or</p> <p>17 make three copies of that, there's going to be a form</p> <p>18 that asks an investigator to do something or a legal</p> <p>19 assistant that asks for a letter of incarceration or</p> <p>20 to contact and get -- go to the jail, get a medical</p> <p>21 release from this client, go to the provider, get an</p> <p>22 estimate for the dollars so the attorney can then ask</p> <p>23 for the estimate of the dollars to be approved. I</p> <p>24 guess some of those are administrative because we</p> <p>25 have to account for, you know, guardians of the</p>
<p style="text-align: right;">Page 38</p> <p>1 asked to utilize funds, and been told no? No, I</p> <p>2 haven't been turned down.</p> <p>3 Q. Can you talk a little bit about the</p> <p>4 day-to-day responsibilities of the other attorneys in</p> <p>5 your office who are not managers?</p> <p>6 A. Well, each of the attorneys, the 10</p> <p>7 are not -- that don't fulfill a management role, have</p> <p>8 a caseload, of course, of their own, so as any --</p> <p>9 their responsibilities would mimic any attorney with</p> <p>10 clients, specifically criminal defense clients, so</p> <p>11 they spend an inordinate amount of time in court,</p> <p>12 some of them an inordinate amount of time getting to</p> <p>13 court for far, far away places, visiting clients at</p> <p>14 jails, communicating with clients through letters or</p> <p>15 phone calls, if not personal visits, opening the file</p> <p>16 or opening the electronic file or the physical file,</p> <p>17 and reviewing discovery, creating to-do lists and</p> <p>18 then, you know, as it goes. If it's creating action</p> <p>19 items to investigators, of course, a large amount of</p> <p>20 time is going to be utilized in negotiating with the</p> <p>21 prosecuting authorities. It's a large number of</p> <p>22 tasks and it would -- a lot of those would be</p> <p>23 consistent, whatever file you pick up, but some of</p> <p>24 those, depending on what the nature of the charge is,</p> <p>25 it might be more limited or it may be more expansive.</p>	<p style="text-align: right;">Page 40</p> <p>1 taxpayers' funds, so in order to just get the ball to</p> <p>2 roll, those steps have to be made.</p> <p>3 Q. Could you say how much, you know, if a</p> <p>4 hundred percent of their day, what percentage of it</p> <p>5 is spent doing that type of work, on average, for an</p> <p>6 attorney?</p> <p>7 A. I would be guessing.</p> <p>8 Q. Okay.</p> <p>9 A. And it would differ from attorney to</p> <p>10 attorney because, frankly, some of them are better at</p> <p>11 filling out their time sheets than others are. Some</p> <p>12 of them are better at filling out the request to do a</p> <p>13 depo than others are. Some of them are still</p> <p>14 learning.</p> <p>15 Q. How much time do you think you,</p> <p>16 personally, spend on administrative tasks versus</p> <p>17 substantive legal work?</p> <p>18 A. Not enough and yet too much.</p> <p>19 Q. If your office had more support staff,</p> <p>20 would that alleviate some of that work for the</p> <p>21 attorneys?</p> <p>22 A. Of course.</p> <p>23 Q. Can you describe or explain how cases</p> <p>24 get assigned to the public defender system and then,</p> <p>25 specifically, to your office, how that process works?</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 A. The statutory scheme is that an 2 indigent accused of a crime fills out an application 3 for an attorney from the public defender system. 4 That may be a judge or a judge's clerk handing it 5 over to someone who is being read their initial 6 charges. It may be someone who is arrested in a 7 facility, and asks for an application, but it -- 8 everything commences with that application for -- 9 application and affidavit of indigence.</p> <p>10 We receive those through a variety of 11 mechanisms. Could be through the mail, we pick them 12 up from the jail, some jails every day, some jails 13 not every day. And then those are processed. Those 14 people that are deemed to be indigent, files are 15 created, attorneys are assigned, and then the 16 commencement of the pleadings begin.</p> <p>17 There are times, obviously, 18 statutorily, the applicant has the right to appeal 19 our finding to the judge, so the judge may appoint 20 us, so we'll get it post-appeal, if you will, where a 21 person accused of a crime that filled out an 22 application then says, "No, I really don't have 23 enough money. I know they said that I don't qualify, 24 but I don't have any money. I've got this rent, I've 25 got that bill, I lost my job," et cetera. And then</p>	<p style="text-align: right;">Page 43</p> <p>1 A. There's no commandment on that and, 2 frankly, there couldn't be no more than I can have 3 one set scheme because if I lose an attorney with 20 4 years' worth of experience, I better hope I get 5 another one. And that doesn't always happen.</p> <p>6 Q. What is your personal caseload right 7 now?</p> <p>8 A. I don't have an exact number. If 9 you're okay with approximations, we can deal with 10 approximations.</p> <p>11 Q. Yes, please.</p> <p>12 A. Frankly, it may be -- it may be more 13 than the last time I looked or it may be slightly less 14 because, again, part of the limitations of not having 15 sufficient resources means you don't have sufficient 16 resources to keep an accurate count of those things 17 that should be closed, and I don't think it's a 18 mischaracterization to say it's approaching 400.</p> <p>19 Q. What types of cases do you have in 20 that 400?</p> <p>21 A. Everything from speeding to murder.</p> <p>22 Q. In your time at District 7 as the 23 district defender, have you always maintained your 24 own caseload?</p> <p>25 A. I've also had a caseload, yes.</p>
<p style="text-align: right;">Page 42</p> <p>1 the judge considers and appoints us, in a lot of 2 cases, so -- and I probably didn't finish my answer, 3 but I'm not sure what -- does that generally address 4 your question?</p> <p>5 Q. Yeah.</p> <p>6 A. Okay.</p> <p>7 Q. So the applications for your -- for 8 Area 7 are processed in your office?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. How do you decide which 11 attorney takes a case? How are they assigned to 12 attorneys one someone is either, I guess, appointed 13 by the court, if there's some appeal of the finding 14 in your office, or your office just decides yes, they 15 qualify?</p> <p>16 A. Is your question how do we know which 17 attorney is going to be assigned?</p> <p>18 Q. How are the cases assigned?</p> <p>19 A. I assign them, and there's a scheme 20 that we use to assign them, and that may be impacted 21 by jurisdiction, experience. So that's the way it 22 works.</p> <p>23 Q. Is it a scheme that you've developed 24 in your office or does it come from a command at 25 central office how to do it?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Is that by your choice, as a manager 2 in that office, or something that comes from the 3 directive of someone above you?</p> <p>4 A. I'm certainly not told what to do in 5 that respect, I mean, I have, over the past -- it's 6 been years and years, but I have been -- it's been 7 suggested to me by supervisors to reduce my caseload 8 in order to, you know, do more of the administrative 9 things. That's not a bad suggestion. It just -- in 10 my estimation, it wasn't a practical one because -- 11 again, because there is no maximum number of caseload 12 that judges feel that we just have an endless amount 13 of supply and endless number of shelves and endless 14 amount of time.</p> <p>15 There are people who are going to be 16 accused of crimes who properly qualify and, under the 17 constitution, have the right to an attorney. And if 18 it's not me representing them, it's going to be 19 another person perhaps with as much experience or 20 Lord forbid, somebody without any experience. And I 21 don't mean on the speeding ticket.</p> <p>22 Q. Right. Do certain attorneys in your 23 office -- because I know we talked about there are, I 24 think, you said, at least three attorneys who have a 25 significant amount of experience so -- and I know the</p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 scheme changes how you assign cases, but are there 2 attorneys in your office who handle more felonies? 3 Are there some attorneys who don't handle any 4 felonies? Could you kind of describe how that works, 5 or maybe it's always changing, and you can't. 6 A. It does change from time to time and, 7 frankly, it -- I like to tell the attorneys when they 8 come in or when I interview them, they may not even 9 be made an offer at some point, but is that we try 10 not to throw them in the deep end without some sort 11 of training. That's the goal. That's not always the 12 reality. 13 Now, we're not going to have them 14 defending the serious cases the minute they come in 15 the door. Even if they want them, they don't get 16 them, but, I mean, invariably what happens is the 17 attorney starts with a slow caseload, and then we 18 percolate it up by necessity, and then they finally 19 get the -- I think they finally begin to wonder and 20 realize the warning I've given them because 21 invariably during an interview with an attorney 22 applicant, they'll ask, "What's your caseload?" 23 And I'll say, "Whatever you think it 24 is, it's higher than that. It doesn't matter what 25 number I give you."</p>	<p style="text-align: right;">Page 47</p> <p>1 have 200 cases? 2 A. Yes. Oh, yeah. That's not to imply 3 the other attorneys have a soft workload. 4 Q. I have an exhibit that will help that, 5 I think, that will clarify workload that I'm going to 6 get to in just a minute. 7 So given that you have your own 8 caseload of 400 cases and you're also the managing 9 attorney in your office, can you talk about how you 10 are able or not able to supervise the substantive 11 work of attorneys in your office? 12 A. It's virtually impossible. I mean, we 13 do the best we can. "Hey, I've got a question" is 14 usually the way that's dealt, or possibly an e-mail, 15 but it's usually -- I mean, more often times than 16 not, it's, "Sorry. Do you mind if I interrupt your 17 lunch?" And I never mind. 18 Q. Are they -- do you have performance 19 evaluations of the attorneys in the office, annual 20 evaluations or such? 21 A. Yeah, we do that. I mean, it's hard 22 to find time to do that, but we do that. We target 23 it so that if they're there for the appropriate 24 amount of time to merit review and to -- and if their 25 performance is there, then we recommend the</p>
<p style="text-align: right;">Page 46</p> <p>1 And part of that is because if they're 2 a new attorney, I'll go so far as to say they really 3 don't have any idea how much work would be involved 4 in one file, much less many, many more than that. 5 Q. Does your office handle any appeals? 6 A. Part of the scheme is we don't. Those 7 are given to appellate offices. 8 Q. Okay. 9 A. I mean, there may be an extraordinary 10 writ or something, but in terms of -- it's rare. 11 Q. Okay. But, like, direct appeals and 12 then post-conviction relief, those go to the 13 appellate office? 14 A. Different departments, yes, yes. 15 Q. If you can, can you approximate how 16 many cases the other attorneys in your office have? 17 A. Not really, I mean, without -- no. As 18 I'm sitting here, I won't be able to do that. It 19 varies. 20 Q. Okay. Are there other attorneys who 21 have a number close to yours? 22 A. No. 23 Q. Do you have the most? 24 A. I do. 25 Q. Are there other attorneys who might</p>	<p style="text-align: right;">Page 48</p> <p>1 promotion, but reviewing for review sake, we don't 2 have time for that, honestly. We should, but we 3 don't. 4 Q. So you review, like, for a promotion? 5 A. Yeah, earmarks in the calendar, sure. 6 Q. Okay. What kind of a promotion? 7 A. From an APD, Assistant Public 8 Defender I to II, III, IV. Those are the four 9 levels. 10 Q. Is that the same in all the district 11 offices, do you know? 12 A. That demarcation, yes. 13 Q. Okay. So as a public defender, you 14 start at I? 15 A. Yes. 16 Q. The highest you can get to is IV? 17 A. Uh-huh. 18 Q. And beyond that would be someone in a 19 manager position? 20 A. Correct. 21 Q. And you said you have a co-manager. 22 What's that person's title? 23 A. It's a deputy district defender. 24 Q. Okay. 25 A. I reference her as my co-manager, Ara,</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 A-R-A, Bailey Brown.</p> <p>2 Q. Okay.</p> <p>3 A. And I think she's been with the public</p> <p>4 defender system 10 to 12 years, I'm estimating.</p> <p>5 Q. And she also maintains a caseload?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any idea how big her</p> <p>8 caseload is?</p> <p>9 A. Not off the top of my head. I know</p> <p>10 it's too much. Other than that, if you're looking</p> <p>11 for a number, I can't give it to you.</p> <p>12 Q. Does the central office perform any</p> <p>13 evaluations on attorneys, that you're aware of?</p> <p>14 A. They -- probably the most direct</p> <p>15 answer is not that I'm aware of. For example, if we</p> <p>16 have recommendations for promotion, then we go to our</p> <p>17 supervisor, and he or she -- at the time, it was he</p> <p>18 or she -- would review, and if they had any questions</p> <p>19 or sought any clarification, that's the way that</p> <p>20 would work. I mean, we don't have the final approval</p> <p>21 for that. Our supervisors do.</p> <p>22 Q. Okay.</p> <p>23 A. So they may ask you to do some</p> <p>24 additional case reviews, case file reviews, for</p> <p>25 example, if you've done X, they may want more. It</p>	<p style="text-align: right;">Page 51</p> <p>1 Can you identify what this document</p> <p>2 is?</p> <p>3 A. Well, the schematic of what it is I've</p> <p>4 seen before, you know, and it's -- obviously, the</p> <p>5 time frames differ, but it's titled "Missouri State</p> <p>6 Public Defender Cumulative Caseload Metrics."</p> <p>7 Q. So you've seen a report like this</p> <p>8 before?</p> <p>9 A. Sure.</p> <p>10 Q. Okay. And this shows, just to confirm</p> <p>11 that I'm correct, a date range of 4/1/17 to 6/30/17?</p> <p>12 A. It does.</p> <p>13 Q. And it looks like -- and you can</p> <p>14 correct me if I'm wrong -- that these cumulative</p> <p>15 caseload metrics show a three-month window.</p> <p>16 Is that common?</p> <p>17 A. That's what I interpret it to be.</p> <p>18 Q. Okay. And can you see Area 7?</p> <p>19 A. I'm looking.</p> <p>20 Q. About halfway down, a little before</p> <p>21 that.</p> <p>22 A. I see it now.</p> <p>23 Q. Okay. And if you follow it over to</p> <p>24 the almost second one it says percent of capacity.</p> <p>25 And tell me if we're all reading the same column. It</p>
<p style="text-align: right;">Page 50</p> <p>1 just depends.</p> <p>2 Q. But they're not actually performing</p> <p>3 the evaluation?</p> <p>4 A. Usually not.</p> <p>5 Q. Okay. Do you, in your office, gather</p> <p>6 your own statistics on workload, attorney workload?</p> <p>7 Do you keep -- I mean, I'm sure there's a way to</p> <p>8 figure out --</p> <p>9 A. There's views on our computer, but, I</p> <p>10 mean, that's just not my expertise.</p> <p>11 Q. Okay.</p> <p>12 A. I think I know where to find them, but</p> <p>13 I would probably need a translator for that, or at</p> <p>14 least some assistant or someone that's more familiar.</p> <p>15 MS. WILCOX: All right. I have the</p> <p>16 first exhibit I'm going to use, and we are trying to</p> <p>17 consecutively number exhibits from the last</p> <p>18 deposition that was taken, so these are going to come</p> <p>19 slightly oddly numbered, it's going to seem. This</p> <p>20 one is going to be Exhibit 14 because I think at that</p> <p>21 last deposition we left off with 13.</p> <p>22 (Exhibit 14 was marked for identification.)</p> <p>23 Q. (BY MS. WILCOX): So I'm handing you</p> <p>24 what's been marked as Exhibit 14. I will hand a copy</p> <p>25 to all attorneys in the room.</p>	<p style="text-align: right;">Page 52</p> <p>1 says 273.1 percent.</p> <p>2 MS. SHIPMA: No.</p> <p>3 Q. (BY MS. WILCOX): Is that what we</p> <p>4 think or am I reading the wrong one? 253.6 percent.</p> <p>5 A. Yeah, I believe my eyes are going over</p> <p>6 to Rank 14, and it appeared to be percent of capacity</p> <p>7 as you detail it, yeah.</p> <p>8 Q. Everybody agrees that that is the</p> <p>9 correct one, 253.6 percent.</p> <p>10 So if I understand this correctly,</p> <p>11 that means that your office is over capacity at 253.6</p> <p>12 percent?</p> <p>13 A. I think whoever loads these metrics,</p> <p>14 that's their opinion, yes.</p> <p>15 Q. Okay.</p> <p>16 A. Sure feels like a lot more than that.</p> <p>17 Q. How long do you think your office has</p> <p>18 been working above capacity?</p> <p>19 A. From memory, my honest recollection, I</p> <p>20 believe Area 7, Liberty, has been over capacity for</p> <p>21 as long as these metrics have been published, but I</p> <p>22 don't know when that started, so I just know it's</p> <p>23 been a lot of years.</p> <p>24 Q. Do you feel like you've been over</p> <p>25 capacity the entire time you've been working in</p>

13 (Pages 49 to 52)

<p style="text-align: right;">Page 53</p> <p>1 Area 7?</p> <p>2 A. You know, I thought you might ask when</p> <p>3 things started to heat up, and I'm going to guess</p> <p>4 around 2005. Now, that's not a -- to be fair, I also</p> <p>5 read portions of your petition, and it reminded me of</p> <p>6 events, telltale events, many of which I didn't like</p> <p>7 to think through again and remember, but if I'm going</p> <p>8 to put a general calendar year on there, that's -- I</p> <p>9 think that's as fair as any others.</p> <p>10 Q. And then you've been working above</p> <p>11 capacity since 2005?</p> <p>12 A. I think the system has, but, you know,</p> <p>13 for example, I don't know how -- I can't tell you</p> <p>14 exactly -- have a personal opinion about the other</p> <p>15 offices because I just -- other than what I believe,</p> <p>16 but I don't work there. I don't know what sort of</p> <p>17 experience level they have. I'll leave that to the</p> <p>18 deference of those individual managers.</p> <p>19 Q. Yeah, we'll talk about your office.</p> <p>20 So is it a fair summation of what you</p> <p>21 said that the number of cases currently handled in</p> <p>22 your office is not manageable?</p> <p>23 A. Oh, it's absolutely not manageable by</p> <p>24 manageable in any definition of the word</p> <p>25 "manageable." And it's certainly not fair for the</p>	<p style="text-align: right;">Page 55</p> <p>1 understand, the cases come in and they get assigned.</p> <p>2 That's why everybody is above caseload. Is that a</p> <p>3 fair way to say that? You're not turning away -- you</p> <p>4 have not historically been turning away cases that</p> <p>5 come into your office?</p> <p>6 A. As a general rule, well, I mean,</p> <p>7 there's been a period with the public defender system</p> <p>8 where that's been attempted, of course, your petition</p> <p>9 mentioned that, but as a rule, no.</p> <p>10 Q. Okay. Is there a way that an attorney</p> <p>11 can raise a complaint about their caseload, or is it</p> <p>12 informal?</p> <p>13 A. Of course, they can. They can report</p> <p>14 me to the bar. They can report any of their</p> <p>15 supervisors to the bar. I think they could probably</p> <p>16 report the judge to the bar, if you're just talking</p> <p>17 about could they. Now, whether or not they know</p> <p>18 that, you know, I don't know if I knew that when I</p> <p>19 was a year or two out of law school. Probably</p> <p>20 didn't.</p> <p>21 Q. Is there any mechanism within your</p> <p>22 office that when you hire people they're told, you</p> <p>23 know, if you have a grievance or complaint about your</p> <p>24 work experience or your caseload, here's the process</p> <p>25 of how to make that known?</p>
<p style="text-align: right;">Page 54</p> <p>1 person accused of a crime.</p> <p>2 Q. How do you monitor the caseload for</p> <p>3 attorneys in your office --</p> <p>4 A. Not sure what you mean.</p> <p>5 Q. -- if you're able to?</p> <p>6 A. Well, first off, there's only so much</p> <p>7 utility in monitoring it, right, because it's really,</p> <p>8 as your petition indicates, it's just about rationing</p> <p>9 the justice. We don't -- we don't ordinarily have a</p> <p>10 way to tell -- to tell anyone, "We have enough, thank</p> <p>11 you, you know, pass." That's not an option.</p> <p>12 So I'm cognizant of the relevant</p> <p>13 experience level of the attorneys and try to have</p> <p>14 some -- try to monitor the degree to which they're</p> <p>15 likely to go into further hysteria if I give them</p> <p>16 more things. My goal every week is not to lose --</p> <p>17 not to lose anyone, especially an attorney, I don't</p> <p>18 want anyone to leave, support staff either, but in</p> <p>19 particular anyone with a bar number. So we take</p> <p>20 extreme measures to try to make that goal.</p> <p>21 Q. Okay. And we're going to touch on</p> <p>22 recent events later, so I don't think we need to get</p> <p>23 to that now.</p> <p>24 A. I understand.</p> <p>25 Q. But is there -- from what I</p>	<p style="text-align: right;">Page 56</p> <p>1 A. When they're hired? No. I just give</p> <p>2 them unadulterated warning that the caseload is</p> <p>3 beyond belief, and it's not fair to the clients and</p> <p>4 it's not fair to the attorneys and it's not a 40-hour</p> <p>5 workweek. I don't want them coming in and then</p> <p>6 leaving because that's a disservice to the clients</p> <p>7 that they represent that I assign to them, a further</p> <p>8 disservice than already exists.</p> <p>9 Q. And with the caveat that we're going</p> <p>10 to talk about recent events, your letter, later, if</p> <p>11 an attorney -- and maybe this has never happened, but</p> <p>12 if they come to you and they say -- I am guessing</p> <p>13 this has happened -- "I can't manage my caseload. I</p> <p>14 have all these cases. I can't do it," what can be</p> <p>15 done? What do you do in that situation if that's</p> <p>16 happened?</p> <p>17 A. Oh, it's definitely happened.</p> <p>18 Q. Can you give an example of how that</p> <p>19 plays out?</p> <p>20 A. Well, sometimes they resign.</p> <p>21 Sometimes they resign shortly after that. Sometimes</p> <p>22 they resign in that same meeting. Sometimes,</p> <p>23 depending on what the -- what my ability is able to</p> <p>24 do, sometimes I'll say let's look at your caseload to</p> <p>25 see if I can give you any relief. It's really -- it</p>

14 (Pages 53 to 56)

<p style="text-align: right;">Page 57</p> <p>1 is just -- it's not any relief at all except to that</p> <p>2 one particular attorney, so there's only so many</p> <p>3 things we can do with that, assuming that everyone</p> <p>4 else is overburdened, which is always the case when</p> <p>5 you consider their experience level.</p> <p>6 Q. And if you're giving relief to one</p> <p>7 attorney, that burden is going to fall on another</p> <p>8 attorney; is that right?</p> <p>9 A. It depends on what kind of relief it</p> <p>10 is. It may be something -- it may be more</p> <p>11 complicated than take these 10 cases and give them to</p> <p>12 that attorney. It may be shifting of a docket so</p> <p>13 that it opens up a pocket of time for them to do jail</p> <p>14 visits or something like that.</p> <p>15 I usually -- I like to -- I tell the</p> <p>16 attorney, "I'm not necessarily going to be able to do</p> <p>17 it, but what do you think might help you the most?"</p> <p>18 And they have -- sometimes they don't have an idea;</p> <p>19 sometimes they do. I know that in terms of</p> <p>20 retention, it's probably going to do -- I'm going to</p> <p>21 try to -- if it's possible for me to do what they</p> <p>22 think is best, I'm going to try to do that if it's</p> <p>23 doable. It depends if it's doable. I might just</p> <p>24 lose the lawyer.</p> <p>25 Q. How often do lawyers in your office</p>	<p style="text-align: right;">Page 59</p> <p>1 going to talk about most recent events in the future,</p> <p>2 I'm not comfortable about dealing with that in a</p> <p>3 vacuum.</p> <p>4 Q. Okay. Then we'll just touch on it</p> <p>5 again when we get to that.</p> <p>6 We already talked about the discretion</p> <p>7 you have in your office kind of generally. Do you</p> <p>8 have discretion setting policies in the office?</p> <p>9 A. Somewhat, sure.</p> <p>10 Q. Okay. What kinds of policies do you</p> <p>11 set as the district defender?</p> <p>12 A. I mean, it could be anything in terms</p> <p>13 of, you know, where the paper cutter -- what room</p> <p>14 that goes in, where the copier is. These are</p> <p>15 high-level command decisions I make. Can also be,</p> <p>16 for example, investigators are not assigned tasks</p> <p>17 without using the action item through the software.</p> <p>18 If there's a measure, and there is, a mechanism by</p> <p>19 which you call in sick or seek annual leave, you</p> <p>20 know, that's a policy --</p> <p>21 Q. That you set in your office?</p> <p>22 A. Yes.</p> <p>23 Q. Yeah. But, like, the amount of leave,</p> <p>24 those policies are set by MSPD?</p> <p>25 A. The amount of leave certainly is,</p>
<p style="text-align: right;">Page 58</p> <p>1 raise concerns about their caseloads?</p> <p>2 A. Well, they're a pretty resilient</p> <p>3 group. I mean, if they don't have a sense of humor,</p> <p>4 they don't work for us. All the time. But, I mean,</p> <p>5 you know, it's not woe is me, it's woe is the client.</p> <p>6 Q. Uh-huh. But -- so it's fair to say</p> <p>7 that everyone has too many cases --</p> <p>8 A. Yes.</p> <p>9 Q. -- your office?</p> <p>10 A. Yes.</p> <p>11 Q. Everyone is aware of that all the</p> <p>12 time?</p> <p>13 A. I think that's accurate.</p> <p>14 Q. Is your personal caseload now higher</p> <p>15 than at any point since you've been district</p> <p>16 defender?</p> <p>17 A. I believe it is.</p> <p>18 Q. And would you agree that the caseloads</p> <p>19 in your office by other attorneys are higher now than</p> <p>20 at any other point that you've been district defender</p> <p>21 or that you've been at MSPD?</p> <p>22 A. Well, I mean, we're talking about</p> <p>23 different level of crisis, but each one of those is a</p> <p>24 crisis, so I don't know how you want me to split</p> <p>25 hairs with that. And that with the caveat that we're</p>	<p style="text-align: right;">Page 60</p> <p>1 yeah. That's through the public defender system.</p> <p>2 Q. All right. I'm going to move on.</p> <p>3 Now, we're going to talk more about how the court</p> <p>4 system itself works.</p> <p>5 A. Okay.</p> <p>6 Q. So starting with initial hearings.</p> <p>7 Describe to me or explain what happens after an</p> <p>8 indigent is arrested, typically. And what I'm going</p> <p>9 to get to is at what point are they first brought</p> <p>10 before a judge?</p> <p>11 A. As I understand it, there's an initial</p> <p>12 arraignment before a judge. I don't know if that's</p> <p>13 necessarily -- I have no reason to think that's</p> <p>14 necessarily always in person, but probably very often</p> <p>15 through video presentment, and initial bond is set.</p> <p>16 Q. So the initial arraignment, the judge</p> <p>17 goes over the charges with them?</p> <p>18 A. That's my understanding.</p> <p>19 Q. Okay. And you just said that's when</p> <p>20 ball or bond is set, at that hearing?</p> <p>21 A. That's my understanding.</p> <p>22 Q. Is there an attorney present at that</p> <p>23 hearing from your office with the defendant, or have</p> <p>24 they not yet applied?</p> <p>25 A. If they're doing video arraignments in</p>

15 (Pages 57 to 60)

<p style="text-align: right;">Page 61</p> <p>1 the court, we may be present in the courtroom. We're</p> <p>2 not involved in that defendant -- in that accused</p> <p>3 case.</p> <p>4 Q. That person has not yet applied for</p> <p>5 your services?</p> <p>6 A. I don't think they've been told they</p> <p>7 can apply. I mean, I'm assuming it's pretty fresh,</p> <p>8 in terms of the arrest.</p> <p>9 Q. Okay. And is the judge who normally</p> <p>10 does an arraignment the same judge who sees the case</p> <p>11 through to the end?</p> <p>12 A. I have no reason to think that that</p> <p>13 consistency applies, especially in a jurisdiction</p> <p>14 where there are many judges.</p> <p>15 Q. Does your jurisdiction have associate</p> <p>16 circuit courts and circuit courts?</p> <p>17 A. Both Platte and Clay does, and so does</p> <p>18 Clinton.</p> <p>19 Q. Correct me if I'm wrong about this.</p> <p>20 Sometimes is a case assigned to an associate circuit</p> <p>21 judge, and then it will be transferred over at some</p> <p>22 point to a circuit judge, depending on decisions that</p> <p>23 are made about how that case is going to move</p> <p>24 forward?</p> <p>25 A. If it's a felony, it could start in an</p>	<p style="text-align: right;">Page 63</p> <p>1 course, if they're going to a judge with a warrant,</p> <p>2 that sort of thing, they may be -- they may have that</p> <p>3 exchange outside the courtroom, maybe. If -- I don't</p> <p>4 know if they're always there.</p> <p>5 Q. Okay.</p> <p>6 A. Yeah.</p> <p>7 Q. Is there a certain point in a case</p> <p>8 when a defendant can move to dismiss charges against</p> <p>9 him or where they would have to do that?</p> <p>10 A. Many of them think that that's such a</p> <p>11 motion.</p> <p>12 Q. And it is not, is that what you're</p> <p>13 saying?</p> <p>14 A. It would be a rare motion where that</p> <p>15 would be filed. There may be strategic reasons to do</p> <p>16 that.</p> <p>17 Q. Is there a certain point in the case</p> <p>18 putting aside that maybe you haven't gotten an offer</p> <p>19 yet, which would preclude this, but when a defendant</p> <p>20 can plead guilty? Is there any time that's too early</p> <p>21 for a defendant to plead guilty or too late in the</p> <p>22 case? I mean, I'm sure you see it up until trial</p> <p>23 they can plead.</p> <p>24 A. Well, let me try to explain. I</p> <p>25 think -- you know, we've seen -- I've witnessed</p>
<p style="text-align: right;">Page 62</p> <p>1 associate or circuit.</p> <p>2 Q. Okay.</p> <p>3 A. If it's a misdemeanor, it will begin</p> <p>4 and conclude in associate.</p> <p>5 Q. So bail is set at this initial hearing</p> <p>6 when an indigent defendant is not represented because</p> <p>7 they have not filled out an application?</p> <p>8 A. I assume that is true, even if they're</p> <p>9 not indigent.</p> <p>10 Q. Okay. The bail is always set at the</p> <p>11 first hearing. Can a bail not be changed after that</p> <p>12 point, and how is that done?</p> <p>13 A. Through a pleading, oral or written</p> <p>14 bond modification effort.</p> <p>15 Q. In your area, is it difficult to have</p> <p>16 bail reduced after it's been initially set?</p> <p>17 A. I mean, it happens. I mean, if you</p> <p>18 back up a minute, I think most of the bond amounts</p> <p>19 are unreasonable, by definition, so I don't know -- I</p> <p>20 don't know how much the timing affects that, is what</p> <p>21 I'm saying.</p> <p>22 Q. Is the prosecution involved in the</p> <p>23 initial bail setting or bond amount?</p> <p>24 A. I don't know if they're in the room.</p> <p>25 Again, if they're in the room, they may be -- of</p>	<p style="text-align: right;">Page 64</p> <p>1 before where people are being initially arraigned,</p> <p>2 and the person accused, perhaps before the judge has</p> <p>3 warned them that they have the right to remain</p> <p>4 silent, they have the right to an attorney, will</p> <p>5 blurt out something about -- and it could probably be</p> <p>6 summarized about how sorry they are and how they want</p> <p>7 to plead guilty. So I suppose, technically, that's</p> <p>8 what they've done without counsel, without sufficient</p> <p>9 early warning by the judiciary, but I don't think</p> <p>10 that's really your question.</p> <p>11 Q. Well, it is, kind of. Have you seen</p> <p>12 that happen where they've pled guilty that early?</p> <p>13 A. Well, you see -- no, they don't plead</p> <p>14 guilty that way.</p> <p>15 Q. Okay.</p> <p>16 A. The judge will say, "I'm going to</p> <p>17 enter a plea of not guilty for you."</p> <p>18 Q. Okay.</p> <p>19 A. But, you know, the problem is they</p> <p>20 would have blurted something out.</p> <p>21 Q. Are there any defenses, in your</p> <p>22 experience, that have to be raised at a certain time,</p> <p>23 or they could be waived?</p> <p>24 A. Boy, that's a loaded question. I'm</p> <p>25 sure you'll come to it later. Well, waived</p>

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<p style="text-align: right;">Page 65</p> <p>1 procedurally or waived because they're not 2 practically available anymore? 3 For example, waived procedurally, 4 unless we miss a time limit, that's probably not 5 going to happen, but waived from a practical 6 standpoint, you know, a case gets -- a case gets 7 stale, it takes too long to get a lawyer, it takes 8 too long to do the investigation, you lose any real 9 chance of getting any kind of alibi defense, memories 10 fade. And then years later you're in a courtroom, 11 and the prosecutor says, "So this is the first time 12 you've told anybody this." 13 And, frankly, it's never the first 14 time they've told them that, or not likely, but the 15 prosecutor attempts to characterize it as this long, 16 protracted delay, and sometimes it's due to no one's 17 fault except the criminal justice system and the lack 18 of funding. This is assuming the lawyer is not 19 retained privately and, you know, and has a caseload 20 ratio of one to one. 21 Q. No. All these questions are assuming 22 that these people are in your office. So it is 23 possible that a defense -- so let's not call it 24 waived, but an opportunity could be missed to raise 25 something because of workload because something just</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. And at what point does the defendant 2 waive any claim, like, a constitutional rights 3 violation claim? Has that happened? 4 A. You have to be more specific. I'm not 5 sure. 6 Q. Why don't I tell you my understanding 7 of it. 8 A. Sure. 9 Q. And then we'll see if you agree with 10 that. 11 So from my experience, my 12 understanding is that -- and I've seen appellate 13 cases that say, you know, you have to raise this at 14 the earliest possible time, and if it wasn't raised 15 at the earliest possible time, it's waived. Is that 16 a fair understanding of how -- 17 A. That's more of an appellate scheme 18 than trial scheme, but, yes. 19 Q. So if it's not raised by an attorney 20 in your office, it could be waived later? 21 A. I mean, you're mixing apples and 22 oranges. If it's not raised in the motion for a new 23 trial, it won't be raised later in the appellate 24 sense, but I'm talking about in terms of pretrial 25 litigation. My head is usually in that realm, but,</p>
<p style="text-align: right;">Page 66</p> <p>1 isn't done? 2 A. Of course, yeah, absolutely. Yeah, 3 absolutely. It could be overlooked because someone 4 is untrained, could be overlooked because someone is 5 too weary because they're overworked. It could be 6 because there's not a sufficient communication link 7 set up so that the client really understands what it 8 is you're discussing. Yeah, could be a lot of 9 reasons. 10 Q. So if I understand you correctly, the 11 defendant may not bring something up, and if memory 12 fades, it's hard to go back and get that information, 13 even if the attorney can find the time to try to get 14 the information? 15 A. That's one scenario, sure. 16 Q. Okay. 17 A. If it sits on an attorney's shelf 18 long enough, too long, before -- before it comes to 19 the top of the pile or because it's going to go to 20 court next week for pretrial motions or whatever, 21 sure, all those things could be. It's hard to 22 resuscitate old evidence, is what I'm trying to 23 say -- 24 Q. Yeah. 25 A. -- old testimony.</p>	<p style="text-align: right;">Page 68</p> <p>1 you know, right to a speedy trial would be a good 2 example. 3 Q. How often do your clients want you to 4 file a motion for a speedy trial? 5 A. Pretty often. 6 Q. And how often can you do that for 7 them? 8 A. I tell them they don't have a right to 9 a speedy trial from a practical perspective in the 10 State of Missouri. And I always try to tell them, 11 depending if they're still listening, what the case 12 law -- how the case law talks about that because 13 there's really two elements of bad news when it comes 14 to that. The case law is such that, if I'm recalling 15 accurately, it can go as long as 16, 17 months, an 16 insane amount of time, and the courts have found that 17 not to be a violation of a speedy trial. But from a 18 practical standpoint, when you're represented by an 19 attorney whose workload is far, far too excessive, 20 you don't get a right to speedy anything. 21 Q. How do your clients take that when you 22 have that conversation with them? 23 A. Well, I try not to have it just like 24 that. I try to explain to them that they can have a 25 speedy trial, but all that means is they'll have</p>

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<p style="text-align: right;">Page 69</p> <p>1 probably an underprepared or totally unprepared 2 counsel, and I try -- in each and every instance, try 3 to urge them that's probably not the right thing. 4 You know, quick result is not always the result 5 you're going to want. And some listen, and many, 6 many clients file pro se motions for a speedy trial. 7 Q. Even while they're represented, right? 8 A. Of course. 9 Q. You said defendants in your area often 10 attend hearing by video; is that correct? 11 A. Sometimes. 12 Q. Okay. 13 A. It depends. Probably more Clinton 14 County than Platte or Clay. 15 Q. So they're in a jail facility, and 16 they just appear on the video. Is there an attorney 17 present in the courtroom, usually, on their behalf? 18 A. That's why I don't prefer the video -- 19 Polycom is what they call it, but the State of 20 Missouri is starting to do it because it saves money, 21 like that should be the guidepost. 22 But, for example, in Clinton County -- 23 I don't want you to get the belief that this happens 24 all the time, but it's not unusual for in Clinton 25 County for there to be -- 43rd Judicial Circuit --</p>	<p style="text-align: right;">Page 71</p> <p>1 and travel and mileage and everything else. 2 Q. That the state pays for. So the state 3 is trying to save money because they -- 4 A. State court system. I don't know who 5 is saving money. I frankly don't care. I think it's 6 wrong, but, yeah. 7 Q. So if you're an attorney on a case, 8 and there's going to be a video hearing, does that -- 9 do they run that by you first, or do you sometimes 10 show up in court, and find out that your client is 11 not coming in person? 12 A. Well, if you're familiar with the 13 jurisdiction, you may know that's probably what's 14 coming. It may be called a Polycom day, and then you 15 figure out that's what -- that's all that's going to 16 happen that day. They may interrupt court 17 proceedings to bring in the Polycom unit and have 18 that happen. Sometimes I guess it could be a 19 surprise. Sometimes you know. It's a rare instance 20 where it's really a good idea, I think, but... 21 Q. Yeah. But sometimes -- I mean, if I'm 22 not familiar with the jurisdiction, and I have a 23 client who is in custody, I might show up, as the 24 defense attorney, well, thinking my client -- 25 obviously, I can talk to them in person because</p>
<p style="text-align: right;">Page 70</p> <p>1 for there to be a Polycom where the client is in 2 custody in a jail facility, sometimes a prison, and 3 they're brought, ushered, just like I am, before a 4 camera here, and then their case is called, and 5 there's some exchange. Now, it may be something as 6 simple -- it could be something as simple as saying 7 your attorney has requested a new docket call, we're 8 going to call you on the next law day, or it may be 9 something more complicated like the guilty plea 10 itself or, Lord forbid, the sentencing, so... 11 Q. That has happened on video, though? 12 A. I think so. 13 Q. Even when someone is represented by 14 someone in your office? 15 A. I think so. 16 Q. Who makes that choice of whether it's 17 going to be video or in person? 18 A. That word choice is a loaded question. 19 Q. Who decides? 20 A. Again, a loaded question. The judge 21 may encourage that, and then I think, I want to say 22 that it's endorsed so much by the court system, I 23 think there's an OSCA form that waives -- official 24 form that waives presence. I don't know the number, 25 of course, and it's all in the name of saving funding</p>	<p style="text-align: right;">Page 72</p> <p>1 they're going to come here, and we can have a little 2 conversation before the hearing. 3 A. Right. 4 Q. Then I might show you up, and that 5 might not be the case, but I had no way of knowing 6 that ahead of time? 7 A. Right. I think that does happen. 8 Q. Okay. Because you're saying in your 9 office, you might know, but that's based on 10 experience, knowing the judges, knowing the 11 jurisdiction? 12 A. Right. Once you're shocked by it the 13 first time, if someone hasn't told you about it, 14 yeah. 15 Q. Not because you're agreeing to it 16 ahead of time by some formal mechanism? 17 A. Well, there may be. I mean, again, 18 you're encouraged to agree to it, so -- and there may 19 be an outcome determinative reason why you would. 20 Q. Is it hearing by hearing decided for a 21 person, or do you maybe agree all pretrial hearings 22 could be by video? 23 A. If a judge encourages you to proceed 24 in that matter. You might decide whether or not 25 you're going to keep that judge, or if you have an</p>

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<p style="text-align: right;">Page 73</p> <p>1 alternative.</p> <p>2 Q. But they might want --</p> <p>3 A. You're probably -- probably going to</p> <p>4 pick and choose between clients, probably.</p> <p>5 Q. But a judge might want every hearing</p> <p>6 up until trial to be by video?</p> <p>7 A. Conceivably.</p> <p>8 Q. Okay. Can you just describe for me</p> <p>9 what a preliminary hearing is and when that might</p> <p>10 happen?</p> <p>11 A. Sure. In the instances where your</p> <p>12 client is charged with one or more felonies, you have</p> <p>13 the right to a preliminary hearing, and it's -- I</p> <p>14 equate it with a probable cause hearing, explaining</p> <p>15 to clients that not all the evidence has to be in or</p> <p>16 is likely to be presented, but just a portion enough</p> <p>17 to convince a judge that some felony has occurred in</p> <p>18 some connection, linking you to one or more crimes.</p> <p>19 And that's the -- in a nutshell, what a preliminary</p> <p>20 hearing is.</p> <p>21 Q. How often are they held in your --</p> <p>22 where you practice?</p> <p>23 A. I don't know that the question makes</p> <p>24 sense. It's a -- what we have -- well, I'll give</p> <p>25 you -- our three primary counties, Clay County has a</p>	<p style="text-align: right;">Page 75</p> <p>1 clients understand sometimes. Sometimes they get it,</p> <p>2 sometimes they don't. Sometimes they're overly</p> <p>3 confident that a witness won't show up, and the case</p> <p>4 will be dismissed, but without revealing too much</p> <p>5 strategy, a preliminary hearing allows an alleged</p> <p>6 victim another opportunity to see your client and</p> <p>7 perhaps better be able to describe physical features,</p> <p>8 any conceivable physical feature.</p> <p>9 Additionally, the case law is such</p> <p>10 that if a preliminary hearing is held, there's the</p> <p>11 concern that later, down the road, if that witness is</p> <p>12 unavailable under the legal terms unavailable, their</p> <p>13 testimony would be allowed in front of your jury and,</p> <p>14 really, at that point in time, you probably have not</p> <p>15 had enough chance or certainly not much opportunity</p> <p>16 to investigate the case or depose the alleged victim,</p> <p>17 et cetera, and then that strong one-sided evidence</p> <p>18 comes in in front of your jury. So a lot of reasons</p> <p>19 to waive, some reasons to have. That is a</p> <p>20 case-by-case basis.</p> <p>21 Q. Okay. After your office is assigned,</p> <p>22 so someone applies, they qualify, is assigned to your</p> <p>23 office, does an attorney from your office attend</p> <p>24 every hearing after they're deemed indigent?</p> <p>25 A. If you mean the same attorney, no.</p>
<p style="text-align: right;">Page 74</p> <p>1 grand jury, so when a county has a grand jury, they</p> <p>2 never have to allow a client to have a preliminary</p> <p>3 hearing. And that confuses clients because you tell</p> <p>4 them they have the right, the judges tell them they</p> <p>5 have a right, and then it's swept away with a grand</p> <p>6 jury so Clay County has a sitting grand jury, so you</p> <p>7 could conceivably never -- could conceivably never</p> <p>8 have a preliminary hearing. Sometimes they allow it,</p> <p>9 sometimes they decide to agree. There's</p> <p>10 reason even -- some reasons why a prosecutor might be</p> <p>11 okay with it, or it might be their idea.</p> <p>12 Platte County, most recently, has had</p> <p>13 their grand jury stripped away from them.</p> <p>14 Historically they didn't have one all the time, and</p> <p>15 then most recently they were allowed to have one. I</p> <p>16 think that was found to -- I don't know why, I don't</p> <p>17 know why technically it was taken away, but I'm just</p> <p>18 glad it was because now -- because some jurisdictions</p> <p>19 abuse it. So if someone is charged with a felony in</p> <p>20 Platte County, they get to have a preliminary hearing</p> <p>21 unless it's waived.</p> <p>22 Q. What might a circumstance be where it</p> <p>23 would be waived?</p> <p>24 A. There are a lot of different reasons</p> <p>25 you would waive a preliminary hearing, some of which</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Talk about what you mean with that.</p> <p>2 A. Okay. For example, if I've got -- if</p> <p>3 I've got Clay County cases assigned to half of our 12</p> <p>4 attorneys, if that's the layout, then the attorney</p> <p>5 assigned to a gentleman's case doesn't necessarily</p> <p>6 mean that that attorney is going to be at every one</p> <p>7 of their docket calls because they may be -- they may</p> <p>8 be out sick, they may be sick, they may be on</p> <p>9 approved leave, they may be conflicted from a</p> <p>10 calendar perspective, and be somewhere else, they</p> <p>11 could conceivably be in trial. But there would be</p> <p>12 some other assistant public defender, if not myself</p> <p>13 or the co-manager, present for that proceeding, so</p> <p>14 they wouldn't be without an attorney, but they might</p> <p>15 likely be without the attorney that technically</p> <p>16 represents them in the filing, in the pleading.</p> <p>17 Q. Okay. Let's -- I think this next</p> <p>18 question is going to be better with an example</p> <p>19 because it involves how much you prepare for initial</p> <p>20 hearings, and I'm guessing that varies, depending on</p> <p>21 the kind of hearing you're showing up to.</p> <p>22 A. Sure.</p> <p>23 Q. That's fair, right?</p> <p>24 A. That's totally fair.</p> <p>25 Q. So let's say you have an early hearing</p>

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<p style="text-align: right;">Page 77</p> <p>1 where you're going to seek to reduce bail. How much 2 time would you have -- would you prepare for that 3 hearing? 4 A. Well, it depends. You know, the 5 question really is how much time you might wind up 6 preparing or choose to prepare or forced to prepare 7 because sometimes it's the client, you're shoulder to 8 shoulder, they want a bond hearing. Sometimes, 9 depending on where you are, you may be in front of a 10 judge that you know is going to entertain that oral 11 bond motion. You also may be, likewise, in front of 12 a judge you know is never going to entertain that 13 with that sort of warning notice. 14 Likewise, same thing with the opposing 15 prosecutor. You may know that that jurisdiction is 16 never going to allow that sua sponte addressing a 17 bond. Sometimes you look at the individual case and 18 see if it's a case that has an alleged victim. If 19 they do, then, statutorily, frankly, the other side 20 is obligated to give them notice or see if they want 21 to attend, that sort of thing. So there may be 22 obstacles created by statute that preclude the judge 23 and the prosecutor to take up that bond. But you may 24 still say -- request of the judge to see if they 25 would be willing to take up bond, for a variety of</p>	<p style="text-align: right;">Page 79</p> <p>1 failure to appear to court appearances, that sort of 2 thing. But you really need to know all that in order 3 to be well-armed, even if the investigation yields a 4 prediction that the bond is probably not going to be 5 touched. 6 Q. When did you -- and maybe you need to 7 do this in two different answers -- but you and the 8 attorneys in your office typically first meet with a 9 client? 10 A. That probably varies. Some attorneys 11 are better at it than others, and not better because 12 they're more experienced or capable or have a better 13 car. It may be because of what jurisdictions they 14 represent. And this -- usually, I'm talking about 15 people who are in custody. 16 Q. Uh-huh. 17 A. You know, people who are fortunate 18 enough to be free, either on bond or released on 19 their own recognizance, we encourage to make an 20 appointment, you know, see us as early as you like, 21 assuming our calendar is available. And sometimes 22 that can be a challenge. But in terms of custody 23 clients, we don't see them soon enough. I mean, the 24 public defender guidelines have a theoretical mandate 25 for how quickly to see them. Sometimes -- I mean, in</p>
<p style="text-align: right;">Page 78</p> <p>1 reasons, even though you may know they're not going 2 to. 3 Now, conversely, sometimes you have 4 witnesses that you're going to subpoena to a bond 5 hearing. Those are the ones where you've had some 6 time to think. Those are the ones where what you 7 have to say might make a difference or you hope might 8 make a difference. Sometimes it makes zero 9 difference. So it varies, but, quite honestly, 10 probably in the majority of our cases, we don't do 11 much except find out about the client's self-divulged 12 criminal history, which is not always accurate. 13 Sometimes through dishonesty, sometimes through 14 actually misunderstanding or not understanding that 15 that was a conviction or "I forgot about that, it was 16 so many years ago." And sometimes that's honestly 17 their mistaken recollection. 18 So because of the workload, it's all 19 too often not very much preparation at all in terms 20 of the information that you would really like to 21 present, assuming the client had the type of criminal 22 history that you might find to be favorable for a 23 modification of bond, and assuming the client had 24 ties to the community, employment lined up, 25 transportation available for court, a lack of a</p>	<p style="text-align: right;">Page 80</p> <p>1 many instances, that's not possible. 2 Q. What is that theoretical mandate? 3 A. I think it's within seven days of 4 being assigned the case. 5 Q. What -- 6 A. I think that's the way it's phrased. 7 Q. What percentage -- this is going to be 8 an approximate percentage, but of your -- the current 9 clients that your office represents are in custody 10 right now? 11 A. I'm going to say I don't think 75 12 percent would be a gross misrepresentation. I think 13 that's probably about true. It could be higher. 14 Q. So how often will an attorney meet 15 with a client within seven days of getting a case? 16 A. I'm going to suppose probably not very 17 often. 18 Q. Okay. Does client contact, initial 19 client contact, ever happen at the first court 20 appearance that an attorney from your office attends? 21 A. It could, I mean, it probably would 22 be -- might be more times than not by accident, if 23 you're going in and the judge isn't on the bench yet, 24 you're going and you're talking to the folks in 25 custody, and you're trying to figure out if they've</p>

20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 applied or "Are you Alfred?" or whatever. And you 2 may just have some human contact with them, and then 3 that happens if there's time, if the court hasn't 4 come out on the bench.</p> <p>5 Q. Do you think that you and the 6 attorneys in your office meet with your clients 7 enough?</p> <p>8 A. No. I mean, I know I don't, and I'm 9 not faulting my attorneys that I supervise. You 10 know, it's kind of -- it's hard to blame them when 11 I'm giving them too much to do.</p> <p>12 Q. Right. In a perfect world, how often 13 would you want to meet with a client?</p> <p>14 A. Depends on what they're charged with.</p> <p>15 Q. Felony.</p> <p>16 A. Depends on what felony, too. Depends 17 on the client, too, regardless of their charge 18 because some need -- some need more assistance and 19 continuation of communication than others, so just 20 depends.</p> <p>21 Q. Is client contact most often done in 22 person or do you sometimes have over-the-phone with 23 clients in custody?</p> <p>24 A. Clients in custody routinely call all 25 the time that they are allowed to call from the jail</p>	<p style="text-align: right;">Page 83</p> <p>1 time and resources to communicate with your clients 2 in a manner that each of your cases requires?</p> <p>3 A. Of course not.</p> <p>4 Q. Do you have any cases where you feel 5 like you can communicate with them in the amount and 6 time that the case requires?</p> <p>7 A. I have clients who may call a lot, 8 purely by accident, you know, that I wind up talking 9 to them with some frequency --</p> <p>10 Q. Okay.</p> <p>11 A. -- but other than that, no.</p> <p>12 Q. And do you think that's the same for 13 the attorneys in your office?</p> <p>14 A. I would presume. I'd have to be -- 15 I'm forced to presume it would be the same because of 16 the workload they have, and commitments.</p> <p>17 Q. Without getting into specifics, if you 18 can and, obviously, not compromising attorney-client 19 privilege, can you think of a time when your 20 representation of a client was hampered by the lack 21 of time you had to communicate, if you could give an 22 example, or for someone in your office?</p> <p>23 A. Sure, I could probably give an example 24 that we try to use as a learning tool. Former 25 assistant public defender trying, quite honestly, to</p>
<p style="text-align: right;">Page 82</p> <p>1 facilities. You know, there's lockdowns and silly 2 rules all the time. I could go on and on about that. 3 But we have both types of communications, you know, 4 clients that are able to call during business hours 5 and jail visits.</p> <p>6 Q. Are the jail visits and the phone 7 calls that you have, are they confidential, to your 8 knowledge, with all your clients?</p> <p>9 A. Well, jail settings are certainly 10 confidential if you visit them in the attorney-client 11 area, I mean, where there wouldn't be anywhere else 12 to visit them. You don't use the -- one facility has 13 a family phone visitation. You don't use that 14 because they record it, so you can't visit in some of 15 the other rooms because they're recorded 16 surreptitiously, but -- and in terms of the clients 17 calling from the jail to our -- those are understood 18 to be confidential and not recorded.</p> <p>19 Q. Okay. Is it common for your clients 20 in custody to remain in custody until their case is 21 resolved either by a plea or trial?</p> <p>22 A. Far, far too often, yes. And that's 23 assuming they're going to get out of custody, yes, 24 but out of the custody of the jail, yeah.</p> <p>25 Q. Right. Do you feel like you have the</p>	<p style="text-align: right;">Page 84</p> <p>1 do the best job that they could, used a -- a client 2 in custody, used a communication method because the 3 jail visitation rooms were tied up, because that's 4 one of the many problems with having clients in 5 custody is because they don't have sufficient 6 visitation hours or facilities to visit with your 7 attorney. And it may have been -- it may have been 8 during a trial or it may have been right shortly 9 before some court proceeding, but that attorney, out 10 of a sense of emergency, there was some urgency for 11 communication, communicated with a client through the 12 family visitation phone thing, and that was recorded, 13 and I don't know if there was a whole lot of 14 forethought about that. There clearly wasn't. But I 15 think the prosecutor wound up mentioning it or 16 bringing it up in some fashion. Now, whether or not 17 it impacted the resolution of that case, I don't 18 know, but it was a learning experience for everyone.</p> <p>19 Q. If you can -- I know that these are 20 hard approximations, but in the percentage of your 21 cases, if I give kind of a list of things that you 22 feel like you're able to do, could you tell me, like, 23 what percentage of cases, so the first example is to 24 interview the victim and other witnesses?</p> <p>25 A. Are you talking about me, personally?</p>

21 (Pages 81 to 84)

<p style="text-align: right;">Page 85</p> <p>1 Q. Yeah. A lot of these questions -- 2 A. Sure. 3 Q. -- are you, personally -- 4 A. Okay. 5 Q. -- and then the attorneys in your 6 office. 7 A. Sure. You're going to find some 8 similarity in the responses. There's not enough time 9 to do that, so, no, it doesn't get done in a routine 10 fashion. 11 Q. How about visiting a crime scene? 12 A. Same answer. 13 Q. And you're saying the same answer for 14 you and the attorneys in your office? 15 A. Yeah. I have no reason to think it's 16 different, I mean, on an overall basis. Obviously, 17 if one of us is -- me or the attorneys I supervise 18 are targeting a case while everyone else, you know, 19 waits in the wind, then that person is really getting 20 first class service for that period of time when it 21 finally comes to the top of the pile. 22 Q. How often does that happen? 23 A. The top of the pile? Not very often 24 because there's only one top. 25 Q. So some cases will never make it to</p>	<p style="text-align: right;">Page 87</p> <p>1 possible, right, talking about a neighborhood canvas, 2 going and interviewing a clerk on the alternate 3 shift. I mean, in terms of how often we're able to 4 do that, I think probably not very often because 5 we're not -- the caseload is such that we're not 6 having the investigators do that sort of thing. 7 Q. Okay. Same question for investigate 8 an alibi. 9 A. Well, that's an even more essential 10 question because the timing of the alibi is so 11 critical. You're going to lose alibi witnesses and 12 you're going to lose credibility of the alibi 13 witnesses if you don't -- because you have a 14 prosecutor that will cross-examine them in front of 15 the jury, this is the first time you mentioned that. 16 And what they don't say is "Because your attorney had 17 400 cases" or "because people kept quitting because 18 of the low pay and high workload" or, most recently, 19 "the fear of being disbarred." 20 Q. How often can you investigate police 21 conduct? 22 A. Well, that's probably only going to be 23 done -- most likely going to be done through 24 deposition, so that's the obstacle we face with being 25 able to examine the file enough to know what pressure</p>
<p style="text-align: right;">Page 86</p> <p>1 the top unless -- or will they if there is an 2 important hearing then, obviously, that will rise it 3 to the top? 4 A. Well, I mean, we have clients every 5 day that plead guilty to -- plead guilty to things 6 that they didn't do because they see the workload and 7 the lag. 8 Now, they may have been convicted of 9 those things they didn't do because there may be 10 evidence sufficient or there may not be. You just 11 don't know until you try it to a jury, right? And 12 sometimes they plead guilty in an effort -- we call 13 it pleading to daylight when they're kept unfairly on 14 too high a bond that nobody can make, and then the 15 probation is offered, dangled outside of their cell, 16 then they're probably going to yield to the pressure 17 and say yeah. 18 Q. So they're pleading guilty to get out 19 of jail? 20 A. Every day. 21 Q. Okay. How often, if at all, are you 22 able to identify witnesses not mentioned in a police 23 report? 24 A. Well, our investigators do a good job 25 of doing that on the cases, you know, if it's</p>	<p style="text-align: right;">Page 88</p> <p>1 points we're going to make on that file and who to 2 investigate and the timing of the depositions of the 3 officers and the scene visits and witnesses 4 interviews or other witness depositions so it all 5 falls into the same category of not enough time, too 6 much stuff to do. 7 Q. Okay. Are there -- are there things 8 in cases that you see repeatedly coming up that you 9 wish you had time to do that, frequently, you and 10 attorneys in your office don't have time, like, the 11 majority of cases, you wish you could take 12 depositions, and you can't, or you wish you could 13 find an expert, and you can't? Are there certain 14 things that pop up more frequently as things that you 15 just don't have the time or resources to do? 16 A. Sure. Most things, but, I mean, I 17 could think of -- I would like to be able to -- of 18 the -- and we try to do this, but then we get 19 interrupted because life happens or, more accurately, 20 work happens. 21 If you have a catalog of depositions 22 of law enforcement officers from a certain 23 jurisdiction, in a perfect world, we would have a 24 brief bank of those depositions so that we would be 25 able to know the things that they did. I can think</p>

22 (Pages 85 to 88)

<p style="text-align: right;">Page 89</p> <p>1 of one particular case where the dash cam video, 2 snapshot of the dash cam video, I believe, shows -- 3 and it was not my case. It was one of the 4 investigators that uncovered it as a result of a 5 request from the assigned attorney -- where the car 6 stop was conducted because the vanity light on the 7 rear license plate was out. 8 Well, it wasn't out. The dash cam 9 showed that. Had that attorney not looked at that -- 10 and we have lots of cases like that. Well, lots of 11 cases where the vanity light is out, too, and lots of 12 cases where the police officer doesn't -- is trained, 13 I believe, or comes to the conclusion maybe they 14 shouldn't turn that dash cam on yet so the defense 15 counsel will never be able to see that it was lit. 16 So if you're going to negotiate it 17 with the prosecutor, that's a powerful tool. If 18 you're going to file a motion to suppress and try to 19 seek judicial intervention, that's a powerful tool. 20 If you've got a cop that has done that, what I would 21 like to do, but never would have enough time to do, 22 would be to be able to -- in a perfect world, I would 23 catalog that, I would make sure my entire office knew 24 about it, and I would make sure surrounding offices 25 knew about it that deal, from a conflict, sometimes</p>	<p style="text-align: right;">Page 91</p> <p>1 And even though that attorney may make the effort to 2 work on that client's file every weekend, from a 3 practical standpoint, that just -- that's not a 4 workable solution, and it's not fair to the other -- 5 all the other remaining clients. 6 Q. So it's fair to say that certain 7 things, the things we've been talking about, visiting 8 the crime scene, identifying witnesses, the alibi, 9 investigating police conduct, are not done because of 10 time management, not because they're not necessary 11 for the trial? The decision is made that there might 12 be not time to do it, or resources, even though an 13 attorney believes that, in a perfect world, it should 14 be done? 15 A. Right. I agree with that in a general 16 sense. Now, part of the problem is if you haven't 17 visited the scene, you don't know, really, what you 18 might have missed, so I may characterize that as 19 something I don't -- now, what I can do is conclude 20 they have sufficient amount of evidence no matter 21 what I find at that scene. I could conclude that, so 22 I'm probably not going to visit that scene. But if 23 the scene is important, the scene is important enough 24 to be visited, and it's not getting done. 25 Q. Okay. Does the -- In your area, is</p>
<p style="text-align: right;">Page 90</p> <p>1 with that officer because that's plain and simple 2 untruthful testimony and a bad stop. 3 Q. So you're saying that in a perfect 4 world, you would like to do that, but in your current 5 world, you're not able to do that? 6 A. Not even come close. I'm not even 7 sure I've told enough people about that. 8 Q. Okay. How often do you think, if it's 9 ever happened that attorneys in your office have the 10 time to work up a case in the manner that the case 11 requires and that that attorney would want to work up 12 that case for a trial? 13 A. I think they all want to to the extent 14 they have the experience to know what the next steps 15 would be. Part of the obstacle will be the 16 inability -- because of the workload, the inability 17 to mentor them as to what to do. A lot of them have 18 great ideas themselves, but they may not know how 19 to put those -- procedurally, how to make that 20 happen. But, you know, this doesn't mean every one 21 of our clients gets poor representation. If you pick 22 somebody out, and you ignore everybody else, that 23 person is going to get class A representation. But 24 it doesn't work like that because you have dockets 25 and you have your inbox with more cases coming in.</p>	<p style="text-align: right;">Page 92</p> <p>1 the discovery that the state is required to disclose 2 frequently disclosed when it should be? 3 A. Oh, boy. Short answer, no. It's a 4 slow drip, and it's not timely. Let's just say it 5 that way. It's not timely, it's not complete and 6 it's -- if it weren't about people's lives, it would 7 be comical. 8 Q. Does it depend on the type of case or 9 is it routinely the same across the board? 10 A. To a certain extent, it depends on the 11 type of case. 12 Q. Do you have an example of what 13 you're -- without getting into too many specifics? 14 A. Sure, right. With the experience that 15 you develop, you probably have a feeling for what's 16 likely to be being held back, what testing hasn't 17 been done, what testing isn't going to be purposely 18 done until later. And in some cases you know that 19 that's never going to be within the realm of the 20 evidence, so it's not coming now, it's not coming 21 later, they're not withholding it. It may be slow, 22 but that just may be because of their insufficiency, 23 not purposeful. 24 Q. How often do you, in your cases, 25 request discovery from the state, make formal</p>

23 (Pages 89 to 92)

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<p style="text-align: right;">Page 93</p> <p>1 discovery requests?</p> <p>2 A. In every case from the speeding ticket</p> <p>3 to serious crimes.</p> <p>4 Q. And is that the same for the attorneys</p> <p>5 in your office?</p> <p>6 A. Yes.</p> <p>7 Q. How frequently do you file</p> <p>8 discovery-related motions?</p> <p>9 A. Can you be more specific?</p> <p>10 Q. Yeah. Do you ever have to -- you</p> <p>11 know, like a motion to compel to seek something</p> <p>12 you've asked for that you're not getting?</p> <p>13 A. We do it with some frequency. I mean,</p> <p>14 it depends on the jurisdiction and, really, the</p> <p>15 opposing prosecutor. Part of what you may want is</p> <p>16 you're more -- you're more interested in getting the</p> <p>17 information because you may still need to negotiate</p> <p>18 the file, so you may not want to put it in quite as</p> <p>19 an adversarial position as you might. Just depends</p> <p>20 on when you're going to pull the trigger.</p> <p>21 Q. So kind of an overall question. In</p> <p>22 your opinion, do you and the attorneys in your office</p> <p>23 have the time and resources to obtain and review</p> <p>24 discovery in a manner that each case requires?</p> <p>25 A. No. Not in a timely manner, no. Not</p>	<p style="text-align: right;">Page 95</p> <p>1 But in a short sense that the timely</p> <p>2 inventorying of discovery, when we get it and what we</p> <p>3 get, is something I wish we could do so then we could</p> <p>4 actually challenge it when it comes up new during a</p> <p>5 trial or shortly before a trial. But it's got to be</p> <p>6 thorough or the judge is never going to find --</p> <p>7 you're not going to have any credible way to explain</p> <p>8 that and prove it.</p> <p>9 Q. Okay. Back to expert witnesses. We</p> <p>10 talked about it briefly, but how often do you use</p> <p>11 experts in your office, you and the attorneys?</p> <p>12 A. From time to time. I don't know</p> <p>13 how -- not every case, obviously, needs it, but the</p> <p>14 key is they have to have -- the attorney has to get</p> <p>15 into the file early enough to know, and that means</p> <p>16 reading the discovery a couple of times to be able to</p> <p>17 figure out what they need, maybe to confer with a</p> <p>18 more experienced attorney, maybe to question would</p> <p>19 this help, would this toxicologist help, would this</p> <p>20 firearms expert help? If you get a file with DNA</p> <p>21 doesn't mean you need a DNA expert. If you get a</p> <p>22 file with fingerprints, it doesn't mean you're</p> <p>23 necessarily going to need a fingerprint expert. It</p> <p>24 depends. And needing them, sometimes you're just</p> <p>25 consulting with them. You may never call them at</p>
<p style="text-align: right;">Page 94</p> <p>1 in a complete manner, no.</p> <p>2 Q. And do you have -- can you provide any</p> <p>3 examples of when the inability to do this, because of</p> <p>4 time and resources, has hampered a case for you or</p> <p>5 someone else in your office?</p> <p>6 A. I can probably give you a general</p> <p>7 example which has happened, and will happen from time</p> <p>8 to time. Because of the -- if you have too few</p> <p>9 people, too few resources, you know, ideally what you</p> <p>10 want to do is inventory the information and when you</p> <p>11 get discovery in case there's a discovery dispute</p> <p>12 down the road. And sometimes that's a pretty</p> <p>13 challenging thing to do because it comes in spurts,</p> <p>14 and sometimes it comes in through duplication</p> <p>15 efforts. So you'll get -- you know, I'll have</p> <p>16 attorneys all the time that say, "Look, I got 50 more</p> <p>17 pages, but only three pages were new." Happens a lot</p> <p>18 and, quite honestly, it's just easier for the other</p> <p>19 side to do it that way. I mean, it takes time on</p> <p>20 their end and personnel on their side to keep track</p> <p>21 of what they're going to give, but if they know they</p> <p>22 can just dump everything on you, and it's going to</p> <p>23 work, and the case law is going to succumb to that</p> <p>24 discovery violation, then that's the way they're</p> <p>25 going to do it. They're not going to change.</p>	<p style="text-align: right;">Page 96</p> <p>1 trial. But it is a way to educate the defense team</p> <p>2 if it becomes an integral part of the state's theory</p> <p>3 of prosecution. You know, so the key is we're not</p> <p>4 early enough into the discovery in order to prepare</p> <p>5 the next step which would include, among many things,</p> <p>6 the expert.</p> <p>7 Q. So because of time management, there</p> <p>8 are cases where you might want to gather the</p> <p>9 information, but just can't?</p> <p>10 A. Just hasn't been reviewed sufficiently</p> <p>11 enough in advance of -- early enough in the case, no.</p> <p>12 Q. Are there cases where an attorney</p> <p>13 thinks an expert might be helpful, but then doesn't</p> <p>14 have time to actually engage in consulting an expert?</p> <p>15 A. I really wouldn't know that, the</p> <p>16 answer to that.</p> <p>17 Q. Okay.</p> <p>18 A. I mean, because by the time I would</p> <p>19 have learned of that, I would have been talking</p> <p>20 through whether or not they need one with them.</p> <p>21 Q. In your current caseload, are you</p> <p>22 using experts in any of your cases?</p> <p>23 A. Any?</p> <p>24 Q. You don't have to tell me, like, what</p> <p>25 the cases are.</p>

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 A. Sure, sure.</p> <p>2 Q. How many do you think?</p> <p>3 A. Understand there's some files I</p> <p>4 haven't touched, so none in those, but I may come</p> <p>5 to -- and one we're going to be seeking funds for</p> <p>6 soon, so it just -- just depends. I mean, the key is</p> <p>7 until you digest the contents of the file, you don't</p> <p>8 have any idea what you might need. And it's that</p> <p>9 lack of time to digest the contents of the file</p> <p>10 that's key to the -- that's the key to the</p> <p>11 disadvantage that our clients are at.</p> <p>12 Q. Okay. And when you do engage an</p> <p>13 expert, do you believe that you and the attorneys in</p> <p>14 your office, once that expert has been engaged, have</p> <p>15 the time and resources necessary to consult an expert</p> <p>16 in the manner that the case requires?</p> <p>17 A. Well, I mean, there's always the</p> <p>18 challenge of coordinating calendars with experts.</p> <p>19 They're really busy. They may be doing a lot of</p> <p>20 other things. And then trying to get back with the</p> <p>21 attorney who may be -- well, necessarily is in court</p> <p>22 a lot so, I mean, that's something you can work --</p> <p>23 that's not our greatest obstacle, by far.</p> <p>24 Q. Once you've gotten to that stage?</p> <p>25 A. Right. The question is getting to</p>	<p style="text-align: right;">Page 99</p> <p>1 most common would be discovery that's received late.</p> <p>2 Now, how those are interrelated is as</p> <p>3 follows: If you -- and this happens all the time.</p> <p>4 If you don't get into the file early enough and</p> <p>5 create an inventory of those things you can tell are</p> <p>6 missing because they say please refer to file report</p> <p>7 number, and when you're done with the pile, it's not</p> <p>8 there, and you shoot the prosecutor an e-mail or a</p> <p>9 note that says we're missing this and this.</p> <p>10 If you haven't had a chance to do that</p> <p>11 then, quite honestly, the prosecutor, he or she may</p> <p>12 not even know that they don't have it, right? And</p> <p>13 invariably what will happen is when they interview</p> <p>14 their witnesses or police officers for trial, they'll</p> <p>15 bring the file, and then they've got files -- they've</p> <p>16 got reports that they don't have, and then they'll</p> <p>17 tell us, "We've got new reports."</p> <p>18 You know, that may not be anyone's</p> <p>19 fault, but if we would have had the adequate</p> <p>20 resources to digest that, the existing discovery, in</p> <p>21 a timely manner, we could have asked for that a lot</p> <p>22 sooner. And we're talking -- we're not talking days</p> <p>23 here. We're talking months or years here.</p> <p>24 Q. And are those months or years often</p> <p>25 when someone is going to sit in jail?</p>
<p style="text-align: right;">Page 98</p> <p>1 that stage, having sufficient information and</p> <p>2 investigation of the contents of the file to get to</p> <p>3 that stage.</p> <p>4 Q. So I've been asking for a lot of</p> <p>5 examples. Do you have, like, a learning example of</p> <p>6 when a client could have been helped by the use of an</p> <p>7 expert, but because of time management, one wasn't</p> <p>8 engaged, and that that hampered the case?</p> <p>9 A. Not a specific example, I mean, not a</p> <p>10 specific example other than just generally a client's</p> <p>11 desire to -- you know, whether it's to go home or</p> <p>12 sometimes to go to prison because they hate the jail,</p> <p>13 you know, but that's hard to -- there are those</p> <p>14 examples, but it's hard to tell someone to be patient</p> <p>15 when they see what's going on with all the other</p> <p>16 people in the jail because they know it.</p> <p>17 Q. Uh-huh. Do you and the attorneys in</p> <p>18 your office regularly seek continuances in your</p> <p>19 cases?</p> <p>20 A. Yes.</p> <p>21 Q. And if so, is there kind of a common</p> <p>22 theme to why those are sought that you can discuss?</p> <p>23 A. Usually, two main categories. One is</p> <p>24 because we haven't had enough time to deal with the</p> <p>25 discovery that we've referred, and then the other</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Almost everyone is in jail. So</p> <p>2 they're either going to remain in jail or they're</p> <p>3 going to plead guilty because they're in a rush, or</p> <p>4 plead guilty to something that there may not be a</p> <p>5 submissible case for.</p> <p>6 Q. Are there any guidelines to when an</p> <p>7 attorney should move for a continuance or is it more</p> <p>8 of a case-by-case decision?</p> <p>9 A. Well, I mean, I will tell you a</p> <p>10 phenomenon that I deal with and have for quite awhile</p> <p>11 is because of the attorneys' workloads, they know</p> <p>12 their limitations and they know there's always more</p> <p>13 cases, so what I'll find is somebody just got late</p> <p>14 discovery, and then they're hampering around, trying</p> <p>15 to get ready for trial, when that is absolutely not</p> <p>16 the proper thing that they should do.</p> <p>17 They should -- easy for me to say --</p> <p>18 make Father Time stand still, file a continuance</p> <p>19 request detailing why they need it and when they got</p> <p>20 it and that sort of thing, and what other</p> <p>21 investigation they need to do as a result of that.</p> <p>22 But they also know that if they do that, it may not</p> <p>23 be granted, and they're forced to go to trial with</p> <p>24 three to five hours' less preparation because they've</p> <p>25 been working on the silly continuance motion.</p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 And they also know that the next</p> <p>2 Monday and the Monday after that and the Monday after</p> <p>3 that they may have a trial scheduled, so I have had</p> <p>4 attorneys that tell me, "If I'm not going to be able</p> <p>5 to work on it now, what makes me think I'm going to</p> <p>6 be able to work on it in six months or three months</p> <p>7 from now if the judge boots it over for three</p> <p>8 months?" Because they see how tied up they are, and</p> <p>9 they know what their weekly life is like, and most of</p> <p>10 which a lot of times in court and in jail.</p> <p>11 Q. And not doing -- not in their office,</p> <p>12 able to do substantive legal work?</p> <p>13 A. Right.</p> <p>14 Q. That's a good segue, actually, because</p> <p>15 I want to talk about how much time is spent traveling</p> <p>16 to court and to jail.</p> <p>17 A. Okay.</p> <p>18 Q. So this is hard, too, because I know</p> <p>19 there are 12 attorneys, but is there a way to kind of</p> <p>20 average how many times in a day an attorney might</p> <p>21 spend just traveling to and from court and then just</p> <p>22 traveling to and from jail?</p> <p>23 A. Not really. I mean, the only thing</p> <p>24 that's of any quantitative value would be the expense</p> <p>25 reports. Attorneys are going to log their miles, and</p>	<p style="text-align: right;">Page 103</p> <p>1 officer. It's also any detective.</p> <p>2 Q. Some jails only have one room; is that</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Clay County?</p> <p>6 A. Some only have one. Clay County is</p> <p>7 not -- well, Clay County has one contact room, and</p> <p>8 then four to five noncontact rooms you visit through</p> <p>9 the glass.</p> <p>10 Q. Okay. Which could still be</p> <p>11 confidential, but you can't actually look at</p> <p>12 something with your client?</p> <p>13 A. Well, right, I mean, you can pass</p> <p>14 through the paper. I mean, it's -- it's a microphone</p> <p>15 system that's not very efficient, but it beats</p> <p>16 nothing. It beats not being able to -- it beats</p> <p>17 waiting in the waiting room, waiting to see your</p> <p>18 client, so -- but Platte County, for example, only</p> <p>19 has one visitation room. They do have a secondary --</p> <p>20 they built for an arraignment, video arraignment,</p> <p>21 that they allow you to go down the hall and use that</p> <p>22 where you have face-to-face contact with your client.</p> <p>23 So that's a total of two, and there are lots of times</p> <p>24 where I go or my other attorneys go, and there's no</p> <p>25 room. You'll have to wait.</p>
<p style="text-align: right;">Page 102</p> <p>1 all that will tell you is how many miles their car</p> <p>2 has traveled. It won't tell you how long they waited</p> <p>3 in a courtroom for their case or cases to be called</p> <p>4 or in a jail for their client or clients to come to</p> <p>5 the room. I don't know how to quantitate that.</p> <p>6 Q. That is another question I have, so I</p> <p>7 will just jump to it.</p> <p>8 How often do you and attorneys in your</p> <p>9 office go have a scheduled visit with a client who is</p> <p>10 in custody, and still have to wait for that client to</p> <p>11 be made available to you for a visit?</p> <p>12 A. All too often, yeah. I mean, we're</p> <p>13 happy when it doesn't happen. We're usually bragging</p> <p>14 about it when it doesn't happen. The norm is that</p> <p>15 there's, yeah, and that's -- it's worse in some</p> <p>16 jurisdictions, right?</p> <p>17 Q. Uh-huh.</p> <p>18 A. And there's also, you know, instead</p> <p>19 of -- there's no way there's no room at the inn.</p> <p>20 There's no room at the jail. If they got too few</p> <p>21 visitation rooms, you're not just competing with --</p> <p>22 you're not just competing with your other public</p> <p>23 defender that you have an office down the hall from</p> <p>24 because that's your competition for that room. It's</p> <p>25 also any private lawyer. It's also any probation</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. What's the longest you've had to wait?</p> <p>2 A. Well, you don't have to wait. You</p> <p>3 wait, you mark it, and you leave because you just</p> <p>4 can't have that kind of time to kill. So I'm</p> <p>5 probably less patient than most. I'm usually trying</p> <p>6 to get names and talk to judges before that happens.</p> <p>7 Q. And if you leave, then you just don't</p> <p>8 see your client?</p> <p>9 A. Of course. Not only that client,</p> <p>10 whatever other client you were going to see that</p> <p>11 time. It happens.</p> <p>12 Q. Is time spent on travel, would you</p> <p>13 call that an ongoing issue for you, personally, as</p> <p>14 far as resources and getting your work done, time</p> <p>15 spent on travel and waiting for clients?</p> <p>16 A. It's really not that big a burden for</p> <p>17 me, but for some of the attorneys that I supervise,</p> <p>18 it's an incredible burden because they may have to</p> <p>19 drive for hours to try to facilitate one file, and</p> <p>20 then hours back. Now, that's the sort of thing that</p> <p>21 we hope to have some relief from, continued relief</p> <p>22 from, some day.</p> <p>23 Q. Okay. And how would you get relief?</p> <p>24 A. Well, the -- without being too</p> <p>25 specific because I don't want to speculate, we've</p>

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 recently had -- been afforded, like I said, a</p> <p>2 miniscule -- I don't want to sound like I'm not</p> <p>3 grateful for it because I am. The allocation of the</p> <p>4 public defender system's budget that allowed contract</p> <p>5 public defenders to be utilized for conflict</p> <p>6 surrounding areas saves us that travel.</p> <p>7 Q. Because those might be further away</p> <p>8 than the --</p> <p>9 A. They absolutely are further away,</p> <p>10 yeah.</p> <p>11 Q. Okay. I see. So, then, you can focus</p> <p>12 on the cases that are in an area that's closer?</p> <p>13 A. Primary counties, yeah.</p> <p>14 Q. Okay.</p> <p>15 A. And sometimes still be driving way</p> <p>16 past them to go see the inmate, of course, like</p> <p>17 Plattsburg because you drive to Andrew County.</p> <p>18 Q. How frequently do attorneys in your</p> <p>19 office file suppression motions?</p> <p>20 A. Again, they do it. They'd probably do</p> <p>21 more -- I know they would do more if they had more</p> <p>22 time to get into the file early. We just know that</p> <p>23 because we're always discussing things and bouncing</p> <p>24 ideas off each other's head and stuff.</p> <p>25 Q. Can you think of a time when maybe</p>	<p style="text-align: right;">Page 107</p> <p>1 that you've seen in your day-to-day practices?</p> <p>2 A. Sure. There's some precautionary</p> <p>3 pretrial motions that might deal with, for example,</p> <p>4 from a procedural standpoint, going to trial, you</p> <p>5 don't want the prosecutor to mention in the voir dire</p> <p>6 or opening statement or witness testimony dealing</p> <p>7 with evidence of other uncharged misconduct. Unless</p> <p>8 you take the time to file that pretrial motion, you</p> <p>9 may have an issue at trial. And sometimes you do it</p> <p>10 to signal to the judge to alert to them this is</p> <p>11 coming. It, frankly, gives the judge more time to</p> <p>12 think if you have a judge that you think this judge</p> <p>13 might -- has a chance of ruling in our favor, or they</p> <p>14 may rule against us, and then the appellate lawyer,</p> <p>15 if the client is convicted, has something on appeal.</p> <p>16 Because you're always thinking about preservation for</p> <p>17 appellate error. That's one thing.</p> <p>18 The other things would be, you know,</p> <p>19 with expert -- talk about the subject of expert</p> <p>20 testimony. With the landmark cases of Frey or</p> <p>21 Daubert, you know, I've got cases right now, files of</p> <p>22 mine, that I know that I've got to file a Frye or</p> <p>23 Daubert motion, and I just -- I shutter to think when</p> <p>24 I'm going to have time to do that. I know I'll go</p> <p>25 back and I'm going to save a lot of time because I'm</p>
<p style="text-align: right;">Page 106</p> <p>1 that window passed where you -- by the time you</p> <p>2 really get into something and figure out that --</p> <p>3 A. Oh, sure.</p> <p>4 Q. -- maybe you should have filed a</p> <p>5 suppression motion, but now it's too late for one</p> <p>6 reason or another?</p> <p>7 A. Sure. If you haven't taken that</p> <p>8 deposition or conducted a scene visit or done a</p> <p>9 witness interview until later in the game, if you</p> <p>10 have a -- assuming your client is in custody, they're</p> <p>11 really not going to be inclined to want -- to wait</p> <p>12 for you to start working -- start working on their</p> <p>13 case. Now, sometimes you slap something together,</p> <p>14 but everything you do takes time.</p> <p>15 Q. Uh-huh.</p> <p>16 A. You know, if it's the kind of motion</p> <p>17 where it's your burden, you're going to have to</p> <p>18 subpoena witnesses. Just depends on what kind of</p> <p>19 motion it is.</p> <p>20 Q. Are there other pretrial motions that</p> <p>21 you frequently see that you think could be helpful,</p> <p>22 but there just isn't time --</p> <p>23 A. Sure.</p> <p>24 Q. -- to work it up?</p> <p>25 Can you just give me examples of ones</p>	<p style="text-align: right;">Page 108</p> <p>1 going to go back to one I filed years ago, and dress</p> <p>2 it up better, but in order to do that, first, I've</p> <p>3 got to read the newest edition of -- the Daubert case</p> <p>4 that everybody is talking about, and I haven't read</p> <p>5 that.</p> <p>6 I'll give you a perfect example. I</p> <p>7 talked to a private attorney who used to work for us.</p> <p>8 He's read the article, and I haven't. That's the</p> <p>9 difference.</p> <p>10 Q. How frequently are cases -- and I can</p> <p>11 divide this into categories if this helps -- taken to</p> <p>12 trial --</p> <p>13 A. Okay.</p> <p>14 Q. -- in your office?</p> <p>15 Does it help if I divide it into</p> <p>16 categories?</p> <p>17 A. Probably makes more sense.</p> <p>18 Q. Okay. So start with noncapital</p> <p>19 homicide cases. And maybe a better way to answer</p> <p>20 that is how frequently do you see those cases, and</p> <p>21 then of the ones you see, how frequently are they</p> <p>22 taken to trial?</p> <p>23 A. Well, it depends on the jurisdiction,</p> <p>24 of course, too, because the venue -- the venue is</p> <p>25 going to decide what sort of fair population cross</p>

27 (Pages 105 to 108)

<p style="text-align: right;">Page 109</p> <p>1 section of a jury panel we're going to get, and in</p> <p>2 many instances that's going to play a role in the</p> <p>3 decision and, perhaps, advice of what we give to a</p> <p>4 client to do. Obviously, it's always the client's</p> <p>5 decision, but in terms of if there's advice to be</p> <p>6 given and taken, then that may -- so the jurisdiction</p> <p>7 matters.</p> <p>8 Also, quite honestly, there are some</p> <p>9 jurisdictions where if it's that type of case,</p> <p>10 noncapital homicide, the offer is never going to</p> <p>11 be -- never going to be reasonable, or anywhere near</p> <p>12 reasonable, so you know it's probably going to go to</p> <p>13 trial. That doesn't create more time for you to work</p> <p>14 on it. Just because you see a file and you've got</p> <p>15 the gold sticker on it and you know it's a murder in</p> <p>16 such and such jurisdiction, you're never going to get</p> <p>17 an offer. And that's -- that's regardless of whether</p> <p>18 or not you've had a chance to digest the contents of</p> <p>19 that file in order to see whether or not there's</p> <p>20 investigation to be done or a plausible defense.</p> <p>21 Q. Do you see charges -- noncapital</p> <p>22 homicide charges frequently in your district?</p> <p>23 A. Oh, yeah.</p> <p>24 Q. So then -- so it is common, then, that</p> <p>25 they would go to trial, like, because of what you're</p>	<p style="text-align: right;">Page 111</p> <p>1 sale or a transfer, a hand to hand or a series of</p> <p>2 those.</p> <p>3 Those typically aren't necessarily the</p> <p>4 kind of cases that are going to scream a great deal</p> <p>5 of investigation because, frankly, they have</p> <p>6 professional witnesses, law enforcement officers, and</p> <p>7 that -- I mean, it is what it is. You'll still need</p> <p>8 to listen to the tapes, if there are audiotapes, and</p> <p>9 that sort of thing. You'll need to chase down any</p> <p>10 leads your client gives you, but sometimes it's more</p> <p>11 of a how much negotiation you're going to be able to</p> <p>12 spend trying to approach the prosecutor to try to get</p> <p>13 some resolution that doesn't, you know, eat up the</p> <p>14 rest of your client's life.</p> <p>15 Q. So is it fair for me to understand</p> <p>16 what you're saying that the more serious the charge</p> <p>17 or the more serious the consequences for a defendant,</p> <p>18 depending on their maybe history or what was going</p> <p>19 on, those are more likely to go to trial?</p> <p>20 A. No.</p> <p>21 Q. They're not?</p> <p>22 A. That just plays a role. I mean, we</p> <p>23 could have -- I'll give you an example. We've got</p> <p>24 more than one case where there's -- it's a</p> <p>25 misdemeanor file, right, and depending on when we get</p>
<p style="text-align: right;">Page 110</p> <p>1 saying you know you're never going to get an offer?</p> <p>2 A. Depends on the jurisdiction and many</p> <p>3 go to trial, yeah.</p> <p>4 Q. Okay. Is there a way to average how</p> <p>5 many in a year might go?</p> <p>6 A. Not really.</p> <p>7 Q. Okay.</p> <p>8 A. I mean, how many a year should go or</p> <p>9 how many a year do go?</p> <p>10 Q. I guess both. Yeah, I mean, because I</p> <p>11 imagine the more serious the case, often the longer</p> <p>12 it would take to get it to a trial; is that common?</p> <p>13 A. That truism, I believe, is true, but</p> <p>14 there's also things that don't involve a decedent</p> <p>15 that's extremely complicated, right? There may be an</p> <p>16 assault, where all that means is, frankly, there's</p> <p>17 more witnesses.</p> <p>18 Q. So after homicide cases I have, how</p> <p>19 about for A/B felonies?</p> <p>20 A. Depends what sort of case it is. I</p> <p>21 mean, it's -- those could include rape or kidnapping,</p> <p>22 or it could be a possession turned into a -- somebody</p> <p>23 with a -- somebody with a severe record that's got an</p> <p>24 incredible amount of exposure. So it may be not</p> <p>25 really a whole lot of drugs, but it may involve a</p>	<p style="text-align: right;">Page 112</p> <p>1 the discovery and how much we know about it, we may</p> <p>2 give it to the relatively newer public defender</p> <p>3 attorney, and then all of a sudden they come and say</p> <p>4 there was a dead body involved in this. This was a</p> <p>5 fatal accident and that sort of thing. And it</p> <p>6 started out as a misdemeanor, and it may end up that</p> <p>7 way, but we've got to treat it as if it might not.</p> <p>8 So that isn't pled. That's slowed down. That's not</p> <p>9 going to be like the -- it was on the traffic docket,</p> <p>10 so you can't treat it like a traffic case where the</p> <p>11 client just wants to get their license back and plead</p> <p>12 guilty, or whatever the situation may be, go to</p> <p>13 alcohol training.</p> <p>14 We also have -- and that's not the</p> <p>15 only case where we've got it's a misdemeanor and</p> <p>16 there's a dead body in the file. So we've got to be</p> <p>17 concerned about -- because sometimes the prosecutors</p> <p>18 are planning their method of prosecution or they're</p> <p>19 just waiting for additional evidence, whether it's an</p> <p>20 autopsy or uncovering more witnesses.</p> <p>21 Q. Do misdemeanors -- I know there are</p> <p>22 other cases you're talking about that might be an</p> <p>23 exception. Do misdemeanor cases often go to trial or</p> <p>24 are those cases more often pled?</p> <p>25 A. It just depends. Overall, I would</p>

<p style="text-align: right;">Page 113</p> <p>1 probably say they're, more oftentimes than not, 2 resolved by resolution other than trial. 3 Q. Okay. How about for felony sex 4 offenses? 5 A. It just depends. You're probably -- 6 you're probably -- you're certainly going to work it 7 up like it's a trial and assume it's going to be a 8 trial because the offers are not going -- it just 9 depends if your client has a history because that's 10 probably going to control whether or not it's going 11 to be resolved by mutual agreement with the other 12 side. 13 Q. Does your office handle a lot of 14 juvenile cases? 15 A. We do not at present. 16 Q. Can you explain that a little bit 17 further? 18 A. Sure. Since the Waters -- since 19 approximately the Waters cases. 20 Q. So around 2012? 21 A. Roughly. 22 We had -- our management, the public 23 defender management, met with the judges, and as a 24 result of that, I believe our two major counties, 25 Clay and Platte, sort of eased off on the juvenile</p>	<p style="text-align: right;">Page 115</p> <p>1 A. We talking the juvenile? 2 Q. Yes. 3 A. You know, I don't know, but I'm 4 assuming that they probably have some juvenile 5 exposure which, quite honestly, may be sufficient 6 because of the familiarity with the juvenile 7 prosecutors, staff, that kind of thing. 8 Q. Okay. Has an attorney in your office 9 ever waived opening or closing argument at trial? 10 And if so, do you know why they would have done that? 11 A. I know I have. 12 Q. Okay. 13 A. I presume -- I'm certain other lawyers 14 have, but as far as why they might, I assume it's a 15 case-by-case basis. I mean, there's perfectly valid 16 reasons to do that. 17 Q. What's a reason that you have done it, 18 if you can share? And if not, we can move on. 19 A. Well, I can't talk about this 20 particular client's case. 21 Q. Right. 22 A. It's strategic. 23 Q. Does that happen often in your 24 experience, that you can speak to? 25 A. It depends on the case. Because it's</p>
<p style="text-align: right;">Page 114</p> <p>1 cases, and assigned them to private attorneys on 2 their list. And so for Clay and Platte, knock on 3 wood, we don't -- we don't do juvenile. There's a 4 couple exceptions in there where we might have got 5 briefly involved, but, for the most part, no. The 6 courts afforded us that relief. Clinton County did 7 not. 8 Q. Do you know what -- are you familiar 9 with how Jackson County appoints -- 10 A. A little bit. 11 Q. -- for juvenile? 12 It's any attorney can be on the list. 13 Is that the same for Clay and Platte County? 14 A. I think Clay and Platte -- no, I think 15 it's different for Clay and Platte because they don't 16 have the major behemoth law firms to draw from. I 17 think -- I think Clay and Platte looks for volunteers 18 that want to be on the list. They may get a nominal 19 fee, with the hope of picking up other cases and 20 expanding their clientele, maybe, but I don't think 21 it's the same way as Jackson. 22 Q. Okay. And part of what I'm getting at 23 is that do you think -- do those attorneys usually 24 have some criminal defense experience that are 25 getting appointed to take those cases?</p>	<p style="text-align: right;">Page 116</p> <p>1 guided by strategy, there's really no way to put a 2 number on -- you know, it's on the case, it's on what 3 I think the government's case is going to be, it's on 4 whether or not your client is going to testify, it's 5 on whether or not that's a certainty or not. 6 Q. Okay. You know there's been a theme 7 to the answers, so I know I'm asking questions that 8 probably I know how the answer is going to come, but 9 in your opinion, do you have the time and resources 10 to adequately prepare for trial? 11 A. No. 12 Q. And do you think the attorneys in your 13 office have the time and resources? 14 A. I know they don't. 15 Q. For any of the cases? 16 A. Well, again, the devil is in the 17 details. If you have one case, and you prepared the 18 heck out of it, and you pled 99 other people or 19 they've decided to plead because they see by the time 20 you come to us, I can't sit here a year and a half. 21 I mean, we've got specific examples of clients in 22 jail, I mean, they're there together, they see what 23 happens. They go to court very often together to the 24 same docket calls, and they see how many lawyers 25 there are available. They can do the math, and that</p>

29 (Pages 113 to 116)

<p style="text-align: right;">Page 117</p> <p>1 sometimes frustrates them.</p> <p>2 Q. So if there's time to work on one</p> <p>3 case --</p> <p>4 A. You may do an absolute superb job.</p> <p>5 It's kind of like having a favorite pet, right? That</p> <p>6 doesn't mean you're -- if you single somebody out,</p> <p>7 but it's to the detriment of everyone, that's why</p> <p>8 there's a concurrent conflict of interest because how</p> <p>9 do you choose without being unfair to the people you</p> <p>10 haven't chosen?</p> <p>11 Q. Is that the same for sentencing</p> <p>12 proceedings, too, about having the time and resources</p> <p>13 to adequately prepare, and if you do find the time</p> <p>14 and resources for one case, that necessarily is a</p> <p>15 detriment to other cases?</p> <p>16 A. Well, I would like to -- can we talk</p> <p>17 about the sentencing, then take a break?</p> <p>18 Q. Yes.</p> <p>19 A. And the reason I give the 2005 line of</p> <p>20 demarcation is not just a random number, but I think</p> <p>21 that's when -- I could be wrong about the year. I</p> <p>22 could be off a couple years -- Senate Bill 5, I</p> <p>23 think, was passed around there, might have been '03,</p> <p>24 not certain, but that was a huge, huge piece of</p> <p>25 legislation. And it did a lot of things, but I think</p>	<p style="text-align: right;">Page 119</p> <p>1 about -- then you're looking for leniency of a jury</p> <p>2 which means a whole lot of things, including experts</p> <p>3 that you might conceivably want to utilize, including</p> <p>4 family members that you might want to utilize.</p> <p>5 What I'm saying is the public defender</p> <p>6 got zero additional dollars to deal with Senate</p> <p>7 Bill 5. No more -- to my knowledge, no more funding</p> <p>8 to have mitigation specialists, no more funding to</p> <p>9 have sentencing advocacy specialists, anything like</p> <p>10 that. Instead, over the course of the years, the</p> <p>11 alternative sentencing unit, as well as the juvenile</p> <p>12 unit, had to be absorbed because of the enormity of</p> <p>13 the other burden on the remaining cases. I don't</p> <p>14 know -- I'm not disagreeing with that call. I'm not</p> <p>15 saying I would have made a different call. It's a</p> <p>16 different -- it's a difficult call.</p> <p>17 Do I miss the -- do I miss the</p> <p>18 juvenile unit? Do I miss the alternative sentencing</p> <p>19 unit? Yeah. But does that mean that one of the</p> <p>20 trial offices got another lawyer? Probably did. It</p> <p>21 probably would have shifted -- I mean, I know that's</p> <p>22 what happened, whether appellate or trial got</p> <p>23 another -- got some kind of relief. But day-to-day</p> <p>24 functioning of the trial offices on Senate Bill 5 --</p> <p>25 and it doesn't affect -- well, doesn't necessarily</p>
<p style="text-align: right;">Page 118</p> <p>1 chiefly, what I remember it doing, is bifurcating</p> <p>2 criminal proceedings where otherwise they weren't</p> <p>3 bifurcated.</p> <p>4 So, for example, your misdemeanor</p> <p>5 shoplifting or your misdemeanor drug possession, if</p> <p>6 it went to a jury, and your client were convicted, it</p> <p>7 would go immediately into the sentencing phase, just</p> <p>8 like a capital case, although I don't do capital, so</p> <p>9 this is all from magazines I read and friends I have,</p> <p>10 but -- now, when Senate Bill 5 passed, there was, to</p> <p>11 my knowledge, zero -- absolutely zero dollars</p> <p>12 allocated, additional dollars, allocated to the</p> <p>13 Missouri Public Defender System to deal with that</p> <p>14 enormous burden that Senate Bill 5 passed upon the</p> <p>15 criminal defense bar. Because what it meant was you</p> <p>16 have -- the jury is waiting. If you plead your</p> <p>17 client guilty, the judge is going to set sentencing</p> <p>18 off so you have some time to gather some additional</p> <p>19 information, witnesses at a future date. You got a</p> <p>20 jury waiting, that's never going to happen. Judges</p> <p>21 are not going to do that. Whenever your jury verdict</p> <p>22 comes back, your sentencing is going to start. If</p> <p>23 it's late one evening, that judge may continue on or</p> <p>24 it may start up first thing the next morning, but</p> <p>25 you've got to be ready. And you're no longer talking</p>	<p style="text-align: right;">Page 120</p> <p>1 have its firsthand -- an impact on the appellate side</p> <p>2 of things. And capital was already like that with</p> <p>3 the bifurcated, I mean, we can't even compare</p> <p>4 ourselves to capital. But the trial side, when you</p> <p>5 have a client that's been convicted, they go to jury</p> <p>6 sentencing, you have to have had all that lead time</p> <p>7 in preparation what are you going to now present to</p> <p>8 the jury in terms of leniency to try to mitigate your</p> <p>9 client's ultimate punishment.</p> <p>10 And I remember my first jury trial</p> <p>11 which was after Senate bill 5. I know what my</p> <p>12 preparation consisted of. It consisted of an</p> <p>13 elevator ride in a Platte County Courthouse. And had</p> <p>14 he not been acquitted, by luck, had he not been</p> <p>15 acquitted, we wouldn't have had a whole lot. There</p> <p>16 was nothing planned for the sentencing phase,</p> <p>17 nothing, but I bet there was on the other side, so --</p> <p>18 and there's been cases on appeal about that. In</p> <p>19 cases some clients have gotten relief on that.</p> <p>20 Trying to think of my client's name that got relief</p> <p>21 because of that, as he should have. But that's a</p> <p>22 perfect example of, you know, additional legislation</p> <p>23 pushing down on one side of the teeter-totter, and no</p> <p>24 relief to the other side.</p> <p>25 MS. WILCOX: Take a break?</p>

30 (Pages 117 to 120)

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<p style="text-align: right;">Page 121</p> <p>1 THE WITNESS: Yeah.</p> <p>2 MS. WILCOX: Okay. Go off the record.</p> <p>3 THE VIDEOGRAPHER: We're off the</p> <p>4 record at 11:26 a.m.</p> <p>5 (A brief recess was taken.)</p> <p>6 THE VIDEOGRAPHER: We're back on the</p> <p>7 record at 11:40 a.m.</p> <p>8 Q. (BY MS. WILCOX): I think before we</p> <p>9 took the break, we had just finished talking about</p> <p>10 prep and time for trials and sentencing.</p> <p>11 A. Okay.</p> <p>12 Q. We concluded that. I'm now going to</p> <p>13 move into guilty pleas.</p> <p>14 A. Okay.</p> <p>15 Q. I have the same list of kinds of cases</p> <p>16 that we talked about before for -- starting with</p> <p>17 noncapital homicides, but I think I'll just -- we'll</p> <p>18 see how this works, but I'll start going through</p> <p>19 them.</p> <p>20 A. Okay.</p> <p>21 Q. How much time do you think it's</p> <p>22 necessary to spend working up a noncapital homicide</p> <p>23 case before you would advise a client whether to take</p> <p>24 a plea?</p> <p>25 A. It depends on the charge and -- you</p>	<p style="text-align: right;">Page 123</p> <p>1 because it's just if I'm there and my hands are at</p> <p>2 the keyboard, that's what I'm going to do because I</p> <p>3 want it in writing, et cetera. But until I've</p> <p>4 digested all of the discovery and satisfied myself</p> <p>5 that we have all the discovery that there is; that</p> <p>6 they've complied with their duty, I'm not going to</p> <p>7 allow a client to accept a plea. I'll convey the</p> <p>8 plea if they're asking, but I'll say, you know,</p> <p>9 here's what we don't have, the lab report, this</p> <p>10 officer's report is, you know, not in there.</p> <p>11 Q. Is that the same for all kinds of</p> <p>12 cases? I mean, from my list it's noncapital, and A/B</p> <p>13 felony, C/D felony, felony sex offenses and</p> <p>14 misdemeanors.</p> <p>15 A. The incomplete discovery never yields</p> <p>16 guilty plea in my book.</p> <p>17 Q. And how about for the attorneys in</p> <p>18 your office that you know?</p> <p>19 A. Well, yeah, I can do better than know.</p> <p>20 They know that's my rule.</p> <p>21 Q. Okay.</p> <p>22 A. Now, the difference may be before</p> <p>23 electronic discovery, the prosecutor would actually</p> <p>24 bring a file to court, and if you didn't have the</p> <p>25 police report, and your client's offer was probation,</p>
<p style="text-align: right;">Page 122</p> <p>1 know, depends on the charge, depends on the</p> <p>2 discovery, whether or not it's complete yet. I'm</p> <p>3 never going to allow a client to plead without -- if</p> <p>4 I think there's some discovery that's missing that's</p> <p>5 obligated to be given. Some clients will disagree</p> <p>6 with that. Some judges, in theory, might, but it</p> <p>7 doesn't matter until you have all the discovery. And</p> <p>8 by "discovery," I deal with that different than</p> <p>9 investigation. That just means show me what you've</p> <p>10 got and what you're going to have by way of evidence.</p> <p>11 Until I have a way to measure and monitor that, I</p> <p>12 don't know what sort of investigation this case might</p> <p>13 merit.</p> <p>14 Q. And this takes us back, actually, to</p> <p>15 something we talked about. I imagine this is the</p> <p>16 same across the board, so correct me if I'm wrong,</p> <p>17 but if you're saying you need to look through the</p> <p>18 discovery, is it also true that that falls, then, on</p> <p>19 your time management issues that if you have to look</p> <p>20 through discovery and make sure you have it, you then</p> <p>21 can't even consider whether to look at the plea until</p> <p>22 you've had the time to do that?</p> <p>23 A. Right. I mean, it's not unusual for</p> <p>24 me to shoot out an e-mail that asks for a plea. I</p> <p>25 just do that if I'm, you know, as a matter of course</p>	<p style="text-align: right;">Page 124</p> <p>1 you could look in the prosecutor's file, read through</p> <p>2 their discovery, and if you're satisfied, I think</p> <p>3 they have a submissible case, they're going to be</p> <p>4 able to satisfy their burden, client wants to plead</p> <p>5 guilty, and there's no investigation that is going to</p> <p>6 make a difference in the case, that's different. But</p> <p>7 that's only with a client that's anxious to get --</p> <p>8 we're still going to try to shoot for a bond</p> <p>9 reduction to see if we can get them out to have more</p> <p>10 time to think about that, but you're in a</p> <p>11 jurisdiction, depending where you are, you may know</p> <p>12 what the answer to that is going to be. But, you</p> <p>13 know, we have told judges the plea offer is</p> <p>14 probation. I haven't had a chance to look through</p> <p>15 this. I haven't met with them, that sort of thing,</p> <p>16 and try to use that as a catapult to get a lower bond</p> <p>17 to get the client more time to think.</p> <p>18 Clients are sometimes, quite honestly,</p> <p>19 in a hurry, in a hurry to make a good decision or a</p> <p>20 bad decision. I don't know. If I haven't examined</p> <p>21 the file, I don't know if it's a good decision. They</p> <p>22 may know something that I don't or, worse yet, they</p> <p>23 may think they know something that I don't, which</p> <p>24 happens sometimes.</p> <p>25 Q. You said you will ask for a plea</p>

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<p style="text-align: right;">Page 125</p> <p>1 offer?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you kind of do that across the</p> <p>4 board on all cases, early in a case?</p> <p>5 A. Almost all cases. Murder cases, I may</p> <p>6 not, because I don't want to create the wrong</p> <p>7 impression on the prosecutor.</p> <p>8 Q. Okay.</p> <p>9 A. And also because I know what their</p> <p>10 answer is always going to be, something horrible.</p> <p>11 Q. Do they often present you with a plea</p> <p>12 offer before you ask, is that common?</p> <p>13 A. Prosecutors, for the most part, act as</p> <p>14 if they're surprised every time we ask, like, "Oh,</p> <p>15 you want a plea offer?"</p> <p>16 Of course we do. Everyone you meet</p> <p>17 does. Every attorney on the planet does. But they</p> <p>18 do that to slow down the process and to not, in my</p> <p>19 mind, not to do work and to prolong the client's</p> <p>20 captivity if there's going to be a probation offer.</p> <p>21 Q. Can you -- and maybe this is</p> <p>22 impossible, but can you give me kind of a percent of</p> <p>23 cases that you have in your office where you get a</p> <p>24 defendant that wants to take a plea just to get out</p> <p>25 of jail, how often that comes up, whether they take</p>	<p style="text-align: right;">Page 127</p> <p>1 than not they've filed a disposition of detainer and</p> <p>2 they're writted to the jurisdiction, what they don't</p> <p>3 want is to serve the remainder of that case they're</p> <p>4 serving, and then commence this new one because</p> <p>5 they'll wind up with an overall greater length of</p> <p>6 incarceration.</p> <p>7 Q. Okay. Are you and the attorneys in</p> <p>8 your office able to spend the amount of time on a</p> <p>9 case before you advise a client about taking a plea</p> <p>10 that you feel is necessary?</p> <p>11 A. I mean, I can only tell you what I do</p> <p>12 and what I hope the others do.</p> <p>13 Q. Uh-huh.</p> <p>14 A. What I fear the others do is try to</p> <p>15 juggle an over -- overly burdensome workload, but I</p> <p>16 know that, ethically, they're resolved and obligated</p> <p>17 to do otherwise.</p> <p>18 If I see a file and there's not</p> <p>19 sufficient notes or not notes, I'm going to -- and,</p> <p>20 again, I don't have much time to do this, but it</p> <p>21 should be what I'm doing, as a manager. If I go and</p> <p>22 I look at the file and I see some insufficiency, I'm</p> <p>23 going to put a note on the file, give it to the</p> <p>24 attorneys, put on it their chair and say, "Give me</p> <p>25 five minutes."</p>
<p style="text-align: right;">Page 126</p> <p>1 it or not, how often that comes up?</p> <p>2 A. Sure, sure, absolutely. Well, I'm</p> <p>3 generalizing, but it's true, I have circumstances,</p> <p>4 cases now and cases in my past. Clients from the</p> <p>5 department of corrections all want to plead guilty to</p> <p>6 concurrent time. They probably have an out date or</p> <p>7 know that they're going to have an out date, and more</p> <p>8 times than not, not never, but more times than not,</p> <p>9 that's an unrealistic idea of what's probably going</p> <p>10 to be offered by the state voluntarily. So what that</p> <p>11 means, that creates an environment where the client</p> <p>12 is mad at you for not resolving it immediately</p> <p>13 especially if you deliver the news that they're</p> <p>14 probably not going to offer you concurrent time. And</p> <p>15 you say that from experience. It's not like you're</p> <p>16 rooting for one side or the other like I know them, I</p> <p>17 know the judge, they think it's a free case, that's</p> <p>18 not happening, so instead you say let me talk to them</p> <p>19 and we'll see, and that kind of stuff.</p> <p>20 Q. Explain to me what you mean like</p> <p>21 concurrent time for something that they're already --</p> <p>22 A. Right. If they're in the DOC --</p> <p>23 Q. -- serving?</p> <p>24 A. Yeah, if they're in the DOC, serving a</p> <p>25 sentence, and they've just hit parole, but more times</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. What would -- because I think what you</p> <p>2 said is you don't have time to look at all the files</p> <p>3 like this to review them, so what would -- when would</p> <p>4 you do that, or is it kind of a one off you just</p> <p>5 randomly pick files to review sometimes of the</p> <p>6 attorneys?</p> <p>7 A. For me -- well, we have file reviews</p> <p>8 for purposes of promotion.</p> <p>9 Q. Okay.</p> <p>10 A. And then the other thing would be if a</p> <p>11 client calls with a question or a client's family</p> <p>12 member, that probably precipitates me looking at the</p> <p>13 electronic file in our computer or maybe pulling the</p> <p>14 physical file and looking. It's kind of hard to</p> <p>15 notice if there's not what you expect to be in the</p> <p>16 file. Or if a client calls and they want a copy of</p> <p>17 their file, and they're looking, it means there's a</p> <p>18 closed file, perhaps, why there isn't what I think</p> <p>19 needs to be in there.</p> <p>20 Now, it's hypocritical of me to be too</p> <p>21 hard on the lawyer who I've given too many cases,</p> <p>22 right? It's like saying why aren't you seeing</p> <p>23 everybody in seven days? And the answer is because I</p> <p>24 know where you've been. You've got a perfect alibi.</p> <p>25 I'm sending you all over the place.</p>

32 (Pages 125 to 128)

<p style="text-align: right;">Page 129</p> <p>1 Q. What -- so aside from asking for an 2 offer and then looking through the file, to some 3 extent, to figure out whether there's something else 4 you need to do, are there other steps that you always 5 take before -- or while you're negotiating on a plea? 6 A. Typically, what I do is, you know, you 7 take the steps in order to get the discovery in the 8 file. Automatically, you get a copy to the client. 9 In my review of discovery, I'll look to see for 10 completeness or anything that's missing. That's the 11 first thing I do. I may jot down some notes or 12 highlight some things that are critical that I know 13 are going to be really good or possibly openings for 14 a possible defense. I may also highlight some 15 innocuous things, too, that don't have anything to do 16 with either, but that's the way I begin the file. 17 And many times that will happen before 18 I even have any meaningful meeting with the client or 19 have ever met them. Quite honestly, many of them now 20 are phone calls and nothing more than that. 21 Q. Do you and the attorneys in your 22 office always communicate a formal plea offer to your 23 clients? 24 A. When it exists, sure. 25 Q. When you get a formal plea offer, you</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. That it can't expire before you can 2 communicate it? 3 A. Well, under the Frye and Lauffer 4 cases, I think -- I think I would like to draw an 5 analogy between failing to provide the plea offer and 6 trying, but through no fault of the client, you 7 haven't been able to, so they could have gotten this 8 whether it's reduction or more lenient sentence, et 9 cetera. 10 Q. So is it typical for the state to 11 offer a plea or give you an offer that will expire? 12 Do they often put deadlines? 13 A. It depends what mood they're in. Most 14 recently I've gotten some, but I pay no attention to 15 the expiration date, I mean, because I know the 16 judges. The judges are not going to punish an 17 overburdened public defender's office. They're just 18 not. 19 Now, the problem with that is 20 sometimes, because of unfettered prosecutorial 21 discretion, they get to -- if their offer -- I have 22 offers right now where, "Plead to this. If not, I'm 23 going to file a felony." 24 Well, the judge has no control over 25 that, so I do have to -- I do have to pay some</p>
<p style="text-align: right;">Page 130</p> <p>1 always communicate that, even though your advice 2 might be don't take the plea? 3 A. Oh, absolutely, it's always 4 communicated. Now, how timely it is is a different 5 issue, right? 6 Q. Talk about that a little bit. 7 A. Sure. Prosecutors like to put 8 deadlines on things sometimes. What I immediately -- 9 my response to that is -- and if we haven't, and 10 we've made records of this, which is, you know, an 11 offer is expired, it doesn't happen a whole lot, but 12 we're not going to let it go unpunished. 13 If a prosecutor sets an artificial 14 deadline to it, and we have things that we really 15 just haven't been able to do that, or whether it 16 means going to visit the client or having a good 17 phone number for the client if they're fortunate 18 enough to be released to come in and to talk to you 19 because, frankly, they may have been picked up on 20 something else, some traffic violation or something, 21 costs, and be whisked away to another jurisdiction. 22 So you haven't been able to communicate it, offer 23 expires, there's case law that supports they can't do 24 that, and that's the position I take, or at least an 25 argument can be made that they can't do that.</p>	<p style="text-align: right;">Page 132</p> <p>1 attention to that deadline. Now, whether or not I'll 2 be able to meet it, your guess is as good as mine. 3 Q. How common does that happen where they 4 file charges for misdemeanor, and then it gets -- 5 that kind of offer, "Plead to this" -- 6 A. And that's why you say what's your 7 caseload, it's an artificial number because there 8 are -- depending on the jurisdiction, there are a lot 9 of instances, and I do mean a lot, where clients are 10 charged with misdemeanors, and if they don't fold and 11 take what is accepted, the threat is we will file a 12 felony or we will file additional charges. 13 It happens all the time. So you have 14 that -- and I've got to be mindful of that or attempt 15 to be mindful of that when I'm assigning cases, too, 16 right, because all of a sudden this misdemeanor, I 17 won't necessarily know what the client's criminal 18 history is, it's not an exposure for up to 12 months 19 in jail all of a sudden or maybe four in prison, it 20 could be a lot more than that. So the attorney 21 assigned needs to be able to deal with a burden like 22 that. 23 Q. Do you always try to communicate plea 24 offers in person or you were saying that sometimes it 25 probably necessarily happens over the phone?</p>

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<p style="text-align: right;">Page 133</p> <p>1 A. I mean, I prefer in person, but, I</p> <p>2 mean, quite honestly, there's a science, I think, I</p> <p>3 found to plea offers. If I have a plea offer, I'm</p> <p>4 almost never going to communicate that unless it</p> <p>5 means get out of jail, but many of my plea offers are</p> <p>6 not you get out of jail. It's how long you're going</p> <p>7 to prison. I'm usually not going to communicate that</p> <p>8 in the first visit. And it would be such an offer</p> <p>9 that would not expire, obviously.</p> <p>10 Q. Right. Any formal offer that's going</p> <p>11 to -- has some expiration date that you think</p> <p>12 matters, you would relate?</p> <p>13 A. I would attempt to comply with the</p> <p>14 deadline, but I can't guarantee that I would be able</p> <p>15 to.</p> <p>16 Q. And it's a deadline given by the</p> <p>17 prosecution --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- that they make up?</p> <p>20 A. They make up, but if it means</p> <p>21 elevating charges, it's not an idle threat.</p> <p>22 Q. So in your opinion, do you and the</p> <p>23 attorneys in your office have the time and resources</p> <p>24 to adequately negotiate plea deals and counsel your</p> <p>25 clients on whether to accept a plea?</p>	<p style="text-align: right;">Page 135</p> <p>1 A. Sure.</p> <p>2 Q. Are there other examples you can give</p> <p>3 like that?</p> <p>4 A. Sure, sure. We are all the time or</p> <p>5 frequently, depending on what it is, depending on</p> <p>6 which prosecutor it is, depending on how we deal with</p> <p>7 them, I have attorneys that ask the prosecutor, "If I</p> <p>8 file a suppression motion, are you going to pull the</p> <p>9 deal?"</p> <p>10 Some will say, well, yeah. Some will</p> <p>11 say no. It's the same thing with the preliminary</p> <p>12 hearing. If you request a preliminary hearing and</p> <p>13 they have a grand jury, justice is going to be</p> <p>14 affected.</p> <p>15 Q. How do you communicate that to your</p> <p>16 client?</p> <p>17 A. It causes a lot of frustration when</p> <p>18 you explain something like that. Well, I mean, my</p> <p>19 particular way, it just depends on the client and</p> <p>20 their level of intelligence, probably.</p> <p>21 Q. But you do try to -- I mean, you have</p> <p>22 to convey to them that I have this plea offer?</p> <p>23 A. Oh, sure.</p> <p>24 Q. But I also think you have a legitimate</p> <p>25 suppression argument to be made, and here are the</p>
<p style="text-align: right;">Page 134</p> <p>1 A. It's pretty time-consuming, depending</p> <p>2 on the jurisdiction that you're dealing with. Some</p> <p>3 prosecutors prefer to be courted in person, and some</p> <p>4 prefer -- are okay with e-mail, so one being more</p> <p>5 time-consuming than another.</p> <p>6 Q. This is the same question, without</p> <p>7 getting into the specifics or compromising</p> <p>8 attorney-client privilege, can you think of an</p> <p>9 example for you, personally, or someone in your</p> <p>10 office, where there could have been a better plea</p> <p>11 deal if there had been more time and resources?</p> <p>12 A. Sure. I can't think of an example,</p> <p>13 but I can think of circumstances where sometimes, at</p> <p>14 least my philosophy is, if the prosecutor, if they</p> <p>15 know they're going to have to work harder, they might</p> <p>16 give a little bit more back. That's not absolutely</p> <p>17 true, you know, sometimes if you take a deposition,</p> <p>18 they're going to pull a plea offer. They just will,</p> <p>19 yeah.</p> <p>20 Q. What other conditions might -- have</p> <p>21 you seen in your practice that the prosecution puts</p> <p>22 on a plea deal, like, what you're saying if you --</p> <p>23 it's not really a condition, but I guess if you know</p> <p>24 there are cases where if you want to take a</p> <p>25 deposition, they're going to pull the plea.</p>	<p style="text-align: right;">Page 136</p> <p>1 consequences that I'm facing, and you have to try to</p> <p>2 communicate that to your client?</p> <p>3 A. Sure, sure.</p> <p>4 Q. Do you and the attorneys in your</p> <p>5 office -- I guess talk to me about how you visit with</p> <p>6 your clients about immigration consequences of</p> <p>7 criminal charges.</p> <p>8 A. I would probably say poorly. We ask</p> <p>9 if you're a U.S. Citizen. That's about as deep as it</p> <p>10 gets. Beyond that, we delay a case in order to try</p> <p>11 to get additional information. We have one or more</p> <p>12 attorneys, I think, that the public defender system</p> <p>13 has worked out an agreement to take our questions. I</p> <p>14 have a friend I went to law school with that I</p> <p>15 sometimes burden or will give his name to some of the</p> <p>16 attorneys I supervise.</p> <p>17 I mean, it's a commonplace issue</p> <p>18 because we have a lot -- for example, a lot of DWIs</p> <p>19 where -- this is sort of beside the point, a</p> <p>20 translator is often involved. What that does is make</p> <p>21 it more cumbersome, from a time perspective, and</p> <p>22 protract things, but then to have the time to be --</p> <p>23 actually be able to figure out what the ICE hold is</p> <p>24 about, and overcome the obstacles of that, because</p> <p>25 it's cumbersome. And you just don't want to -- I</p>

34 (Pages 133 to 136)

<p style="text-align: right;">Page 137</p> <p>1 mean, so, really, what the client often is told is</p> <p>2 this may impact whether you're deported or whether</p> <p>3 you're ever able to return. And that's about the</p> <p>4 only advice they ever get. Nothing more specific</p> <p>5 than that.</p> <p>6 Now, it's a real complicated subject.</p> <p>7 I don't pretend to be an expert on it, and I know</p> <p>8 most of my clients aren't, but there's -- you know,</p> <p>9 sometimes what that does is cause us to set a DWI</p> <p>10 trial for jury trial to buy time to look into it or</p> <p>11 with the hope that the prosecutor might do something.</p> <p>12 Or if ICE is involved, that ICE happens before they</p> <p>13 get this conviction because if you have the</p> <p>14 discovery, you probably can be able to assess whether</p> <p>15 or not they're going to be able to carry their burden</p> <p>16 which with the blood alcohol level, they're probably</p> <p>17 not going to need anything else.</p> <p>18 Q. Are there -- so are there any formal</p> <p>19 steps that are taken within your office or that you</p> <p>20 know of with MSPD that are required for -- you know,</p> <p>21 besides asking, "Are you a U.S. citizen?" And maybe</p> <p>22 that's just an office policy.</p> <p>23 A. Well, it's the result of a landmark</p> <p>24 case. That's what caused it, that additional inquiry</p> <p>25 and precaution.</p>	<p style="text-align: right;">Page 139</p> <p>1 who is fortunate enough to be on bond. He actually</p> <p>2 has consulted with some or sought to, but couldn't</p> <p>3 afford it, you know, et cetera.</p> <p>4 Q. So he knows more about --</p> <p>5 A. He seems to know more than the</p> <p>6 afternoon person about it.</p> <p>7 Q. Okay. Have you ever seen any special</p> <p>8 training offered or required to identify immigration</p> <p>9 consequences for attorneys in your office?</p> <p>10 A. I'll say this about training: The</p> <p>11 training within the public defender system, they seek</p> <p>12 to do a good job. The challenge is creating the time</p> <p>13 to attend those things is really pretty impossible.</p> <p>14 Q. Have you ever seen trainings offered</p> <p>15 on immigration consequence?</p> <p>16 A. I think I have.</p> <p>17 Q. Okay.</p> <p>18 A. Yeah, I think, in fact, the friend</p> <p>19 that I mentioned I think even presented at one of the</p> <p>20 MSPD functions. I look at the syllabus and I see it,</p> <p>21 and I don't have time to attend it, but I see it.</p> <p>22 Q. So in your opinion, do attorneys in</p> <p>23 your office, including you, have time and resources</p> <p>24 to adequately advise your clients on immigration</p> <p>25 consequences of the decisions they're making in their</p>
<p style="text-align: right;">Page 138</p> <p>1 Q. Okay.</p> <p>2 A. And it was only because of that case,</p> <p>3 the name of which escapes me now.</p> <p>4 Q. How long ago was that?</p> <p>5 A. The case?</p> <p>6 Q. How long have you been asking, "Are</p> <p>7 you a U.S. citizen?" formally?</p> <p>8 A. Since that case law came down.</p> <p>9 Q. But you don't remember exactly when</p> <p>10 that was?</p> <p>11 A. I can't remember the name of the case</p> <p>12 or the year that case came down, but it's the</p> <p>13 landmark case.</p> <p>14 Q. Okay.</p> <p>15 A. It may come to me before the end of</p> <p>16 the day. If it does, I'll blurt it out.</p> <p>17 Q. Is there any -- and then so you'll</p> <p>18 reach out to any resources that you have about who</p> <p>19 might know something about immigration law, is what</p> <p>20 you're saying?</p> <p>21 A. Right. And sometimes if the clients,</p> <p>22 whether they're in custody or out, the communication</p> <p>23 may include, "Do you have an immigration attorney?"</p> <p>24 because sometimes they're working with one, not very</p> <p>25 often, but sometimes, or sometimes I've got a fellow</p>	<p style="text-align: right;">Page 140</p> <p>1 criminal case?</p> <p>2 A. Not to an extensive extent, no. Not</p> <p>3 to a sufficient extent, I don't believe so.</p> <p>4 Q. Can you think of any examples of where</p> <p>5 maybe someone didn't have time to do the work or</p> <p>6 didn't understand the consequences, and had a</p> <p>7 negative result?</p> <p>8 A. We probably wouldn't necessarily be</p> <p>9 aware of the negative result because, frankly, that</p> <p>10 might not happen till years in the future if it</p> <p>11 involves re-entry. I just don't know. And if</p> <p>12 there's an ICE hold, that's usually a bad sign. But,</p> <p>13 again, I don't know if that means there's defenses to</p> <p>14 that through immigration, appointed attorney or not.</p> <p>15 Q. Okay. How often do you see competency</p> <p>16 proceedings happening in your area?</p> <p>17 A. Well, let me back up and say that we</p> <p>18 do a lot of -- we spend a lot of resources and</p> <p>19 consult a lot of expert concerning competency under</p> <p>20 552 and 552.02 and .03. It's an enormous, as you</p> <p>21 might imagine, time drain because it's so complicated</p> <p>22 and involves an expert, whether it's the state's</p> <p>23 expert or privately retained expert, hired through</p> <p>24 the funds available under the MSPD, and it impacts</p> <p>25 the negotiation and defenses, but we see it a lot. I</p>

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<p style="text-align: right;">Page 141</p> <p>1 mean, there's -- mental health is huge in our</p> <p>2 caseload, mental health issues.</p> <p>3 Q. Could you give it, like, an</p> <p>4 approximate percentage of cases where either</p> <p>5 competency becomes an issue whether or not, I guess,</p> <p>6 it ultimately results in a proceeding?</p> <p>7 A. In the higher level cases, I can't</p> <p>8 give you a percentage, but it frequently comes up</p> <p>9 where there's an independent examination that's</p> <p>10 requested. We look at it and, frankly, even the</p> <p>11 lowest level of criminal events, we look at it in</p> <p>12 terms of mitigation or negotiation with the state,</p> <p>13 hoping that they see some leniency side of things.</p> <p>14 Q. Does the state ever request</p> <p>15 psychiatric evaluation?</p> <p>16 A. Sometimes.</p> <p>17 Q. Not as frequently?</p> <p>18 A. Certainly not as frequently as we do</p> <p>19 privately, no.</p> <p>20 Q. If someone has been arrested and</p> <p>21 charged and is in custody, and then deemed</p> <p>22 incompetent, I guess, at that time, what happens to</p> <p>23 them? Where do they go?</p> <p>24 A. I think they go to the Department of</p> <p>25 Mental Health for a stay of six months until another</p>	<p style="text-align: right;">Page 143</p> <p>1 the person around the corner is brought to the retail</p> <p>2 store, and the clerk is -- you know, those are not</p> <p>3 preferable by either side I don't think.</p> <p>4 Q. And they just bring in the one person?</p> <p>5 A. Yes.</p> <p>6 Q. And say, "Was this the person who</p> <p>7 committed" --</p> <p>8 A. Well, I think that's what they say if</p> <p>9 it's on a tape, yeah, or they might word it a little</p> <p>10 more strongly than that.</p> <p>11 Q. Do those typically occur early in a</p> <p>12 case?</p> <p>13 A. In the case investigation?</p> <p>14 Q. Yeah, how far after charges are filed</p> <p>15 and you're, I guess, get a case would something like</p> <p>16 that happen?</p> <p>17 A. Well, it would be before we're</p> <p>18 involved or we have the right to be involved.</p> <p>19 Q. That makes sense. So then you're not</p> <p>20 showing up at those, that's just the --</p> <p>21 A. Well, you have to understand when you</p> <p>22 say "photo array" or a "line-up," those -- I assume</p> <p>23 you're talking about those that involve a case</p> <p>24 investigation before someone is charged or the</p> <p>25 magical words "person of interest." So precharges</p>
<p style="text-align: right;">Page 142</p> <p>1 report or update is given to the judge, is the way I</p> <p>2 understand 552.</p> <p>3 Q. And every six months, they would be</p> <p>4 reassessed to see if they can continue with the case?</p> <p>5 A. That's the way it's supposed to</p> <p>6 function, yeah. I think that -- my understanding is</p> <p>7 the Department of Mental Health, because of either</p> <p>8 perhaps legitimate budgetary constraints, takes</p> <p>9 longer than that or needs longer than that. That's</p> <p>10 what I've heard.</p> <p>11 Q. Okay. Do attorneys attend an</p> <p>12 evaluation, a psychiatric evaluation, with a client?</p> <p>13 A. Typically, I don't believe so.</p> <p>14 Q. Okay. Are line-ups common in cases</p> <p>15 you're handling, police line-ups?</p> <p>16 A. Photographic or in person?</p> <p>17 Q. I was going to ask both.</p> <p>18 A. Okay.</p> <p>19 Q. So please talk about both.</p> <p>20 A. We have a lot of our cases where there</p> <p>21 are photos arrays, and also show-up IDs that are</p> <p>22 involved.</p> <p>23 Q. What's a show-up ID?</p> <p>24 A. Where the clerk is brought to the</p> <p>25 person that is arrested around the corner or where</p>	<p style="text-align: right;">Page 144</p> <p>1 were not involved in any of that. We don't -- we</p> <p>2 would have no reason -- we would have no reason to</p> <p>3 have ever received an application, for example. Now,</p> <p>4 whether or not those folks, when or if they're ever</p> <p>5 advised to the right of counsel, I wouldn't know</p> <p>6 unless I had a chance to look at the reports.</p> <p>7 Q. Okay. Presentence investigation, I</p> <p>8 guess, or PSI reports, are those common before</p> <p>9 sentencing?</p> <p>10 A. Yes. More recently they've changed</p> <p>11 their name to sentencing assessment reports, so from</p> <p>12 a PSI they went to an SAR, same things only they're</p> <p>13 not as long.</p> <p>14 Q. Okay.</p> <p>15 A. I don't know if that's good or bad,</p> <p>16 but it's common to have that sort of thing. And</p> <p>17 sometimes that's part of the negotiation, and</p> <p>18 sometimes there are judges that prefer the</p> <p>19 involvement of the SAR. Some judges don't care, some</p> <p>20 judges won't resolve a matter without having one.</p> <p>21 Now, what that means, from a practical standpoint, is</p> <p>22 if your client is offered probation, and you're in</p> <p>23 front of a judge and they're in custody, if they're</p> <p>24 offered probation, and they elect to plead guilty to</p> <p>25 the charge or charges, and the judge, if you're in</p>

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<p style="text-align: right;">Page 145</p> <p>1 front of a judge that insists on a SAR, and they</p> <p>2 remain in custody, that's going to take another</p> <p>3 probably six weeks before their sentencing. If</p> <p>4 they're released, it will delay it by six weeks.</p> <p>5 Q. So it's always the judge that would</p> <p>6 request it, or would it be requested by a --</p> <p>7 A. Judges like to -- some judges insist</p> <p>8 on having one, and won't accept to be bound by the</p> <p>9 plea without the SAR. Every now and then you get</p> <p>10 judges that do that, but in order for it to be</p> <p>11 waived, the judge has to be comfortable that</p> <p>12 everybody is involved in waiving it, elects to waive</p> <p>13 it on the record.</p> <p>14 Q. Who participates in the assessment</p> <p>15 besides the person being assessed and the person</p> <p>16 assessing them, is the attorney -- is anyone else</p> <p>17 present?</p> <p>18 A. You know, it's funny you mention that.</p> <p>19 I had never participated in one or attended one in</p> <p>20 decades of practice until a recent client that I had.</p> <p>21 And I advised the probation officer I wanted to be</p> <p>22 present, and then -- well, one thing led to another.</p> <p>23 Eventually I made it up the chain of command, and</p> <p>24 they provided me the policy they have, state</p> <p>25 probation and parole, where they suspend the</p>	<p style="text-align: right;">Page 147</p> <p>1 reason to attend them all because the clients really</p> <p>2 could benefit, I think. More clients than not could</p> <p>3 benefit because many are undereducated. And, quite</p> <p>4 honestly, the reason they don't want you there is</p> <p>5 because then they've got a witness. So if they're</p> <p>6 willing to videotape them, I don't need to be there,</p> <p>7 but I would still probably be there.</p> <p>8 Q. But they don't videotape them?</p> <p>9 A. No, no, goodness no.</p> <p>10 Q. Have you asked them to videotape?</p> <p>11 A. No. I just now thought of that.</p> <p>12 That's the first time I ever thought of those two</p> <p>13 things, those two worlds colliding.</p> <p>14 Q. Who does the assessment?</p> <p>15 A. State probation and parole officer of</p> <p>16 some sort.</p> <p>17 Q. So who is normally in the room, just</p> <p>18 the probation/parole officer and your client?</p> <p>19 A. Well, like, for example, when you go</p> <p>20 to the jail, they'll be on the phone lines and you'll</p> <p>21 see them, and that's the way they're conducted, or</p> <p>22 they may come into the -- they may tie up the only</p> <p>23 room they have to visit our client doing them, too,</p> <p>24 doing the interview.</p> <p>25 Q. Do you know how long they usually</p>
<p style="text-align: right;">Page 146</p> <p>1 constitution of the United States and say that an</p> <p>2 attorney is not to be involved in that. So it's just</p> <p>3 crazy. It's just one of their silly rules, but I</p> <p>4 have it in writing. It's one of their rules. It</p> <p>5 goes to show you not every rule is a rule.</p> <p>6 So -- and I really wanted to be</p> <p>7 present for one, I had one particular reason because</p> <p>8 of the nature of the client. It was a murder client</p> <p>9 that -- long history to it, and she knew why I wanted</p> <p>10 to be present. So I attended, but I complied with</p> <p>11 their silly rule of noninvolvement. I didn't</p> <p>12 interrupt him. I know I could have. It might not</p> <p>13 have resulted in -- he probably would have taken it</p> <p>14 out on the client so, once again, someone with an</p> <p>15 associate's degree in command of the criminal justice</p> <p>16 system. So usually don't attend those.</p> <p>17 Q. So you just learned about this policy?</p> <p>18 A. Yeah, but I could care less about</p> <p>19 their policy. If we had time, we would attend them</p> <p>20 all.</p> <p>21 Q. Okay.</p> <p>22 A. Absolutely. We would love to be</p> <p>23 able -- if we had time, we would attend them all.</p> <p>24 I'm not saying we would have the interest to attend</p> <p>25 them all, but there would certainly be a legitimate</p>	<p style="text-align: right;">Page 148</p> <p>1 spend, or does it totally depend on the case and the</p> <p>2 person?</p> <p>3 A. Well, I mean, I've heard everything</p> <p>4 from -- they're not thorough. When I tell you they</p> <p>5 went from a PSI to an SAR, same number of initials.</p> <p>6 Less thorough. It's really pretty useless.</p> <p>7 Q. Okay.</p> <p>8 A. I don't know how long they take. I've</p> <p>9 heard of circumstances where they are they just drop</p> <p>10 off the forms to the client, "Fill this out, and I'll</p> <p>11 come back for it," so I'm not sure that they</p> <p>12 necessarily have a face-to-face exchange in each and</p> <p>13 every instance. I wouldn't know.</p> <p>14 Q. Why do you think judges find them so</p> <p>15 helpful?</p> <p>16 A. Cover. And sometimes they actually do</p> <p>17 provide some useful information about the -- you</p> <p>18 know, for those judges that are inclined to, you</p> <p>19 know, exercise leniency in those cases that are</p> <p>20 deserving of it, they could theoretically be useful</p> <p>21 for that purpose.</p> <p>22 Q. But more often than not, in your</p> <p>23 opinion, they are not useful or helpful?</p> <p>24 A. Depends on the judge.</p> <p>25 Q. How often do clients represented by</p>

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<p style="text-align: right;">Page 149</p> <p>1 your office want to withdraw a plea?</p> <p>2 A. It comes up. I don't know. I can't</p> <p>3 give it a -- it doesn't come up so frequently that I</p> <p>4 would say, oh, that happens a lot.</p> <p>5 Q. Okay.</p> <p>6 A. But there are circumstances where it</p> <p>7 does.</p> <p>8 Q. What steps do you take if that</p> <p>9 happens?</p> <p>10 A. Well, if I'm aware of it, it's because</p> <p>11 one of the attorneys have come and said, "Hey, so and</p> <p>12 so wants to withdraw their plea," and then we talk</p> <p>13 about -- I try to walk the attorney through why and</p> <p>14 what's the reason and what stage the case is at and</p> <p>15 that sort of thing, so -- and then we look to the</p> <p>16 rule.</p> <p>17 I'm of the opinion that they don't</p> <p>18 have the right to withdraw their plea unless, under</p> <p>19 the rule, there's a manifest reason to do that. And</p> <p>20 sometimes, quite honestly, we've got to be concerned</p> <p>21 with the client shooting themselves in the foot by</p> <p>22 doing that because it may -- you may be in a</p> <p>23 jurisdiction where the judge says, "I'll not just</p> <p>24 withdraw it, I'll withdraw it with pleasure." And</p> <p>25 when they do, the prosecutor elevates the charges.</p>	<p style="text-align: right;">Page 151</p> <p>1 make to the client in terms of if you filed a</p> <p>2 suppression motion or a motion in limine, to talk</p> <p>3 about -- I always talk about trying to -- if the</p> <p>4 trial is not successful, protecting them, and giving</p> <p>5 them all appellate points that are possible to</p> <p>6 preserve. How much of that they understand, I don't</p> <p>7 know, but in terms of, you know, will you be my</p> <p>8 attorney on appeal, then you explain how the process</p> <p>9 works and how we're going to file this, and then it</p> <p>10 will be up to the appellate office to assign you an</p> <p>11 attorney.</p> <p>12 Q. So you help them get there, though?</p> <p>13 A. Right. We sort of serve it -- we tee</p> <p>14 it up. We tee up the appeal through the notice of</p> <p>15 appeal.</p> <p>16 Q. Okay. And how -- I'm told I'm using</p> <p>17 this term correctly. Elocutions done in your</p> <p>18 district, is that something that you're attending and</p> <p>19 participating in with your client?</p> <p>20 A. I'm pretty sure that's just a phrase</p> <p>21 at the sentencing, in my experience.</p> <p>22 Q. So you're there, and it's just --</p> <p>23 A. We're there when the judge says that</p> <p>24 word.</p> <p>25 Q. Okay. And then so as far as</p>
<p style="text-align: right;">Page 150</p> <p>1 So, you know, it's all about protecting the client</p> <p>2 and trying to educate them at the same time.</p> <p>3 Q. When does your office's role and</p> <p>4 representation end, I mean, is there -- just at</p> <p>5 sentencing, when that is done, is your office done</p> <p>6 with representation? Does that question make sense?</p> <p>7 A. Sure. When it's a plea, it's when the</p> <p>8 judgment and sentence is concluded, the sentencing</p> <p>9 hearing. When it's a trial, then there's the</p> <p>10 obligation to have -- most clients want to appeal.</p> <p>11 You presume that's the case, you know, after a trial.</p> <p>12 Every now and then you find one that doesn't, but you</p> <p>13 can always withdraw that later. We prepare a motion</p> <p>14 to proceed in forma pauperis along with the proposed</p> <p>15 order to present to the judge at sentencing. After</p> <p>16 the judge sentences, we present that, and then we</p> <p>17 coordinate with the appellate division. Trial side,</p> <p>18 typically, files the notice of appeal.</p> <p>19 Q. So you advise your clients about their</p> <p>20 rights to appeal separately, and does the court</p> <p>21 usually do that as well at a sentencing?</p> <p>22 A. Well, the right under 24.035, the</p> <p>23 judge does because they've pled guilty, and that's</p> <p>24 part of the proceeding. After a trial, it usually --</p> <p>25 you know, it usually is part of the explanation you</p>	<p style="text-align: right;">Page 152</p> <p>1 post-trial, you would file any post-trial motions in</p> <p>2 your office, or that would happen before the notice</p> <p>3 of appeal and you kind of handed it off?</p> <p>4 A. The post-trial motion typically would</p> <p>5 just include the motion for new trial after a jury</p> <p>6 has convicted then a sentencing date set, you attend</p> <p>7 that sentencing date, argue the motion for new trial,</p> <p>8 it's typically overruled, of course, and then the</p> <p>9 sentencing occurs. It's at the conclusion of that</p> <p>10 that we file the motion and order to appeal in forma</p> <p>11 pauperis, and then within 10 days is, I believe, the</p> <p>12 due date for the notice of appeal for the court of</p> <p>13 appeals.</p> <p>14 Q. And because we already -- your office</p> <p>15 is not currently taking any juvenile cases unless</p> <p>16 there's a special circumstance?</p> <p>17 A. Clinton County, we do.</p> <p>18 Q. Okay.</p> <p>19 A. And those are not really special</p> <p>20 circumstances, it's just whenever the judicial judge</p> <p>21 in the 43rd Judicial Circuit involves us.</p> <p>22 Q. Then I will go through these</p> <p>23 questions.</p> <p>24 A. Okay.</p> <p>25 Q. And when you say -- so Clay and Platte</p>

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<p style="text-align: right;">Page 153</p> <p>1 County, that's a judge decision that they decided --</p> <p>2 A. They afforded us that relief around</p> <p>3 the time of Waters.</p> <p>4 Q. Okay.</p> <p>5 A. One of them sort of one -- one of them</p> <p>6 has been continuous. Platte has been more continuous</p> <p>7 than Clay, but both, right now, we are relieved of</p> <p>8 that obligation.</p> <p>9 Q. How are those cases assigned within</p> <p>10 your office, the ones you do get from Clinton County</p> <p>11 and then I guess --</p> <p>12 A. I primarily have one attorney, and</p> <p>13 only one attorney, covering Clinton County cases, so</p> <p>14 the attorney that I have covering Clinton County</p> <p>15 cases is assigned their juvenile cases.</p> <p>16 Q. And then also covers many other cases,</p> <p>17 other dockets, as well?</p> <p>18 A. Goodness, yes, and other counties,</p> <p>19 too, sure.</p> <p>20 Q. Okay. How is indigency determined for</p> <p>21 juveniles?</p> <p>22 A. My understanding is, frankly, every</p> <p>23 juvenile qualifies unless they have some trust fund</p> <p>24 that we're going to stumble upon, they're going to</p> <p>25 qualify. We're not going to find them to be</p>	<p style="text-align: right;">Page 155</p> <p>1 A. I have inquired of the Clay County</p> <p>2 juvenile chief detention officer about that because</p> <p>3 in a conversation with the judiciary, I expressed my</p> <p>4 frustration over that, why so far. Because I was</p> <p>5 thought -- I was led to believe perhaps there was a</p> <p>6 possibility that they would -- that those juveniles</p> <p>7 could instead be housed within walking distance from</p> <p>8 our office at the Clay County Juvenile Justice</p> <p>9 Center, but the communication was made and,</p> <p>10 apparently, the 43rd Judicial Circuit contracts with</p> <p>11 the Kirksville facility, I'm told.</p> <p>12 In my mind, still not good enough</p> <p>13 reason to make my staff waste their time because,</p> <p>14 frankly, they could drive them a shorter distance to</p> <p>15 the Clinton County jail, juvenile jail. They have</p> <p>16 specific -- an entire building dedicated to juvenile</p> <p>17 justice.</p> <p>18 Q. In Clinton County?</p> <p>19 A. Clay County.</p> <p>20 Q. Clay County. Sorry.</p> <p>21 A. Clinton instead transfers them to</p> <p>22 Kirksville.</p> <p>23 Q. Hours away?</p> <p>24 A. Hours away.</p> <p>25 Q. Okay. So if you are an attorney who</p>
<p style="text-align: right;">Page 154</p> <p>1 ineligible because of the wealth of either or both</p> <p>2 parents.</p> <p>3 Q. Okay. Are they often held in custody</p> <p>4 and kept in custody in the cases that you see?</p> <p>5 A. Yes.</p> <p>6 Q. Where are they held?</p> <p>7 A. Glad you asked. From our experiences,</p> <p>8 those juveniles that are charged in the 43rd Judicial</p> <p>9 Circuit, the portion, the tiny fraction of the 43rd</p> <p>10 Judicial Circuit that we cover, which is Clinton</p> <p>11 County Courthouse in Plattsburg, Missouri, those</p> <p>12 young men and women are generally housed in</p> <p>13 Kirksville, Missouri.</p> <p>14 Q. How far is that from where they might</p> <p>15 live?</p> <p>16 A. Well, I don't know where they live,</p> <p>17 but it is hours and hours away from the Plattsburg</p> <p>18 courthouse.</p> <p>19 Q. Which is where they need to show up</p> <p>20 for their hearings?</p> <p>21 A. Yes, and where our lawyers are, yeah,</p> <p>22 so we drive half a day away and back again for the</p> <p>23 juvenile cases.</p> <p>24 Q. Why are they sent there, is it just</p> <p>25 because of the facility that --</p>	<p style="text-align: right;">Page 156</p> <p>1 is assigned this case and wants to visit a client</p> <p>2 before a hearing in person, they would have to</p> <p>3 drive --</p> <p>4 A. I have had my Clinton County</p> <p>5 attorneys, over the course of the different attorneys</p> <p>6 that have covered Clinton County, drive to</p> <p>7 Kirksville.</p> <p>8 Q. And so that -- I mean, that's an</p> <p>9 entire day just for a visit?</p> <p>10 A. Yes.</p> <p>11 Q. If your office is conflicted out of a</p> <p>12 juvenile case, where does that case go in Clinton</p> <p>13 County?</p> <p>14 A. Since we only do Clinton County</p> <p>15 conflicts in juvenile, I don't know that we've done</p> <p>16 that. I can't say that we've done that. It's</p> <p>17 happened in Clay or Platte, but those have been years</p> <p>18 and years ago, so I'm not quite sure where that would</p> <p>19 go, how that would be handled.</p> <p>20 Q. Would a juvenile -- because assuming</p> <p>21 they would all qualify for representation -- ever</p> <p>22 have to attend a detention hearing without an</p> <p>23 attorney?</p> <p>24 A. Yes.</p> <p>25 Q. What's the circumstances that that</p>

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<p style="text-align: right;">Page 157</p> <p>1 would happen?</p> <p>2 A. The rules require it to be within -- I</p> <p>3 forget the number of hours, maybe 20. It's</p> <p>4 relatively short. Might be a little longer than</p> <p>5 that. And sometimes that occurs prior to their</p> <p>6 application, I think. I have more familiarity with</p> <p>7 Clay County than anything else and, like I said,</p> <p>8 we've been fortunate enough not to do that for a</p> <p>9 number of years, but I think there's a possibility</p> <p>10 that the juvenile in Clinton County would have a</p> <p>11 detention area without an attorney, but I don't know</p> <p>12 if that's the normal practice or not.</p> <p>13 Q. And that's just because of how quickly</p> <p>14 it happens and they don't have -- they haven't</p> <p>15 applied or they don't have an attorney assigned?</p> <p>16 A. I mean, they're usually -- of course,</p> <p>17 the only source they have, generally, is either the</p> <p>18 judge or the juvenile officer to tell them, usually</p> <p>19 speaking to the parent, probably, you have the right</p> <p>20 to fill out an application, so...</p> <p>21 Q. Are they usually told that, in your</p> <p>22 experience?</p> <p>23 A. I'm not sure. Juvenile, especially in</p> <p>24 the 43rd Judicial District, is a shroud of secrecy.</p> <p>25 It's unlike anything you see on American TV.</p>	<p style="text-align: right;">Page 159</p> <p>1 attorneys were -- there's no way that I could cast</p> <p>2 them into -- have that additional burden, too, and so</p> <p>3 we had -- that was pretty time-consuming, but we had</p> <p>4 the hearing down there in Jackson County.</p> <p>5 Q. What type of preparation comes -- do</p> <p>6 you do for a certification hearing?</p> <p>7 A. Well, on that particular one, again,</p> <p>8 he happened to be at the top of the pile which is --</p> <p>9 you know, you create the pile. It's not first come,</p> <p>10 first served or last in line. It's the triage</p> <p>11 method. And there was sufficiently interesting</p> <p>12 information in the discovery that we received that we</p> <p>13 wound up subpoenaing probably half a dozen officers.</p> <p>14 Q. But that's not always the case?</p> <p>15 A. Not typically the case.</p> <p>16 Q. So, then, I guess now we're going to</p> <p>17 jump back to alternatives to detention. Are there</p> <p>18 resources available to the attorneys in your office</p> <p>19 to identify alternatives, or is this just something</p> <p>20 maybe they know about because they do this type of</p> <p>21 work regularly?</p> <p>22 A. Are we still talking about juvenile?</p> <p>23 Q. Yes.</p> <p>24 A. Okay. Other than -- I think, as far</p> <p>25 as I know, the only alternative to detention would be</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. Okay. So that judicial circuit is</p> <p>2 just particularly its own situation, in your</p> <p>3 experience, I guess?</p> <p>4 A. In a word, yes.</p> <p>5 Q. Okay. Are there frequently</p> <p>6 certification proceedings for juveniles that your</p> <p>7 office sees?</p> <p>8 A. There have been in the past. I don't</p> <p>9 know that recently we've had any certification</p> <p>10 hearings in the juvenile cases that we handle.</p> <p>11 Q. Is it common for the attorney who</p> <p>12 handles the cases to line up alternatives for</p> <p>13 detention for the juveniles?</p> <p>14 A. I'm sorry. Let me go back to that</p> <p>15 first question. I guess it wasn't all that long ago</p> <p>16 that I handled a juvenile certification hearing in</p> <p>17 Jackson County because, as you mentioned, Jackson</p> <p>18 County has the list, and it was during the transition</p> <p>19 of the relief afforded our trial offices with</p> <p>20 contract conflict counsel, and the special way that</p> <p>21 Jackson County does their juvenile through the</p> <p>22 private attorney list and law firms assistant, that</p> <p>23 sort of thing, but there was one lingering that was</p> <p>24 sort of caught in between where our office was</p> <p>25 involved. I handled it, frankly, because I -- all my</p>	<p style="text-align: right;">Page 160</p> <p>1 one of the parents or family members.</p> <p>2 MS. WILCOX: Okay. Can we go off the</p> <p>3 record for a second.</p> <p>4 THE VIDEOGRAPHER: We're off the</p> <p>5 record at 12:27 p.m.</p> <p>6 (A brief recess was taken.)</p> <p>7 THE VIDEOGRAPHER: We're back on the</p> <p>8 record at 12:30 p.m.</p> <p>9 MS. WILCOX: All right. So we're</p> <p>10 talking about alternatives, I believe, is where we</p> <p>11 left off.</p> <p>12 Could you read back the last question</p> <p>13 and answer.</p> <p>14 (The record was read by the Reporter.)</p> <p>15 Q. (BY MS. WILCOX): So if a parent and</p> <p>16 family member is an alternative to detention, that's</p> <p>17 something that the attorney would argue for -- would</p> <p>18 go to a hearing and argue that the child be placed</p> <p>19 somewhere other than in a detention facility?</p> <p>20 A. That would be the argument, yes.</p> <p>21 Q. How often is that granted?</p> <p>22 A. In the setting of Clinton County, I'm</p> <p>23 going to -- I think it's safe to believe probably</p> <p>24 never.</p> <p>25 Q. Okay. And so, then, those juveniles</p>

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<p style="text-align: right;">Page 161</p> <p>1 are housed is Kirksville, pending some outcome of</p> <p>2 their case?</p> <p>3 A. Yes.</p> <p>4 Q. Is that where they would stay if their</p> <p>5 sentence involved a period of time after, like, a</p> <p>6 conviction or a plea? Do they stay in that facility?</p> <p>7 A. It's a special juvenile facility so,</p> <p>8 yes. That could be where they wind up if they were</p> <p>9 serving juvenile detention after the case is</p> <p>10 concluded.</p> <p>11 Q. Does the attorney in your office ever</p> <p>12 work with expert witnesses in juvenile cases?</p> <p>13 A. I don't have any firsthand knowledge</p> <p>14 of that, I mean, I'm sure there was a time when we</p> <p>15 did more juveniles that, perhaps, that came up</p> <p>16 probably in the Jackson County setting.</p> <p>17 Q. Okay.</p> <p>18 A. But I don't remember approving any use</p> <p>19 of those in the Clinton County. That's where I --</p> <p>20 that would be my gatekeeper, right, because I didn't</p> <p>21 approve, so I'm assuming it wasn't utilized.</p> <p>22 Q. Are social workers utilized in the</p> <p>23 juvenile context?</p> <p>24 A. I don't believe so. I know we don't.</p> <p>25 Q. These are kind of summation questions,</p>	<p style="text-align: right;">Page 163</p> <p>1 respond to the Waters decision?</p> <p>2 A. Well, the lead-up to the Waters</p> <p>3 decision, because this is -- I've got a file at the</p> <p>4 office just of the opinion, but it's been years since</p> <p>5 I've read it. Leading up to that and the effort to</p> <p>6 create -- to impact the workload and create a</p> <p>7 caseload cap, there was a certain degree of optimism.</p> <p>8 After Waters, there was legislation</p> <p>9 pending that sought to privatize the public defender</p> <p>10 system, and it was received, frankly, with some</p> <p>11 hysteria on the part of attorney and nonattorney</p> <p>12 staff members for fear of the system -- that wasn't</p> <p>13 everyone, but that was a lot of people, for fear of</p> <p>14 losing their jobs and their income and their health</p> <p>15 care and that sort of stuff.</p> <p>16 Q. How did the judges in the district</p> <p>17 respond to the Waters decision, was there any change?</p> <p>18 A. Well, like I said, Clay and Platte, as</p> <p>19 a result of the meetings that my supervisors held</p> <p>20 with Waters -- in connection with the Waters, they</p> <p>21 continued the relief through the juvenile cases, and</p> <p>22 we didn't -- sparing us of that obligation. I don't</p> <p>23 know how else to explain how they impacted -- how</p> <p>24 they effected it. When the prosecutors file the</p> <p>25 cases, the judges really don't have any control over</p>
<p style="text-align: right;">Page 162</p> <p>1 so bear with me because they are things you've said,</p> <p>2 but I would like to just kind of ask a final</p> <p>3 question.</p> <p>4 A. Sure.</p> <p>5 Q. In your opinion, can the attorneys in</p> <p>6 your office, including you, adequately represent all</p> <p>7 the clients on their docket?</p> <p>8 A. No.</p> <p>9 Q. And what's the basis for your opinion?</p> <p>10 A. Excessive workload and insufficient</p> <p>11 resources.</p> <p>12 Q. And does your opinion stay the same no</p> <p>13 matter how expert or the amount of experience an</p> <p>14 attorney has?</p> <p>15 A. It may be impacted by the amount of</p> <p>16 experience necessarily because, quite honestly, an</p> <p>17 inexperienced attorney, wherever they work, wouldn't</p> <p>18 necessarily know what they're missing.</p> <p>19 Q. We talked -- we've touched on the</p> <p>20 Waters case --</p> <p>21 A. Yes.</p> <p>22 Q. -- from 2012. So you were in your --</p> <p>23 the current employment?</p> <p>24 A. Yes.</p> <p>25 Q. How did the attorneys in your office</p>	<p style="text-align: right;">Page 164</p> <p>1 the number of cases that are charged.</p> <p>2 Q. Do you think that your office</p> <p>3 continually exceeded its caseload capacity for any</p> <p>4 period of time that spans three months at a time</p> <p>5 before and after Waters? Has that been ongoing?</p> <p>6 A. Our overcapacity, there's no doubt,</p> <p>7 has been continuously ongoing.</p> <p>8 Q. Since at least 2005?</p> <p>9 A. '05?</p> <p>10 Q. That was kind of the year we were</p> <p>11 talking about?</p> <p>12 A. Sure, sure, sure. Well, I mean you're</p> <p>13 talking about that's the Anthony assessment. You're</p> <p>14 talking about metrics in Exhibit 14, so I don't</p> <p>15 know -- you're talking about what it feels like as a</p> <p>16 manager and what I believe we were going through with</p> <p>17 the then period of transition and lack of</p> <p>18 investigators and relative -- a lot of novice -- new</p> <p>19 experienced attorneys, yeah. I mean, I don't have</p> <p>20 any reason to think that in 2005, it's not a good</p> <p>21 time to begin to say things were beyond -- began to</p> <p>22 get beyond control.</p> <p>23 Q. And have stayed that way, and gotten</p> <p>24 worse?</p> <p>25 A. They've gotten far worse.</p>

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<p style="text-align: right;">Page 165</p> <p>1 Q. Okay.</p> <p>2 A. Worse.</p> <p>3 Q. Can attorneys in your office -- let's</p> <p>4 talk about before Hinkebein. Am I pronouncing that</p> <p>5 correctly?</p> <p>6 A. Karl Hinkebein.</p> <p>7 Q. Hinkebein. Before that, in the recent</p> <p>8 events, was there a way for attorneys to refuse to</p> <p>9 take cases in your office?</p> <p>10 A. Before the Karl Hinkebein case opinion</p> <p>11 was rendered, no one -- we never really discussed</p> <p>12 about refusing cases. There was never any discussion</p> <p>13 of that. There was always a constant discussion of</p> <p>14 too many cases, and -- but that was the extent of it.</p> <p>15 I mean, refusing as in -- frankly, the refusal was --</p> <p>16 I'm assuming that was with attorney resignations.</p> <p>17 And I don't know if it's accurate to characterize</p> <p>18 that as a refusal. It may have been -- frankly, may</p> <p>19 have been, unfortunately, been -- and I'm not proud</p> <p>20 of this -- a surrender. Or they may have left for</p> <p>21 other reasons. They may have left because their</p> <p>22 student were such that they couldn't afford to pay</p> <p>23 them, you know, or some combination thereof. But</p> <p>24 refusal, that's a magical term that comes from the</p> <p>25 Karl Hinkebein case.</p>	<p style="text-align: right;">Page 167</p> <p>1 understand there's a lot to be done and a whole lot</p> <p>2 of preparation and a whole lot of research and</p> <p>3 writing.</p> <p>4 But, essentially, my assessment of the</p> <p>5 Karl Hinkebein case was that the Office of Chief</p> <p>6 Disciplinary Committee made an issue of specifically</p> <p>7 making excessive caseload not a defense to the</p> <p>8 attorney, regardless of whether or not the attorney</p> <p>9 is a private counsel, and purposely took on too many</p> <p>10 cases, trying to become a profiteer, essentially, or</p> <p>11 somebody like Karl Hinkebein, who's been a state</p> <p>12 employee, undercompensated, overworked for decades,</p> <p>13 someone who had their supervisor bring them work to</p> <p>14 the hospital bed to continue to work for their</p> <p>15 clients.</p> <p>16 And the Office of Chief Disciplinary</p> <p>17 Committee made it a point, because it's a point in</p> <p>18 their brief, to make sure that the Supreme Court did</p> <p>19 not carve out an exception to public defenders</p> <p>20 specifically no excuse that you don't have any</p> <p>21 control over the number of cases that you have an</p> <p>22 obligation to ethically and zealously defend.</p> <p>23 It's a mathematical calculation that I</p> <p>24 could never agree with. It just doesn't make any</p> <p>25 sense. And it sent shock tremors through the public</p>
<p style="text-align: right;">Page 166</p> <p>1 Q. Okay. So why don't you tell me about</p> <p>2 the case, and describe the best you can, I guess, and</p> <p>3 without going -- and briefly, like, but what the</p> <p>4 decision was and what that held, what that means for</p> <p>5 your office.</p> <p>6 A. Well, I have some experience with the</p> <p>7 office of chief disciplinary committee as a result of</p> <p>8 nonmanagement as well as nonmanagement duties. I'm</p> <p>9 certainly not an expert on that. But over the years,</p> <p>10 there was always discussion at management meetings</p> <p>11 that, you know, clients were making bar complaints.</p> <p>12 And there was never -- there was never an issue</p> <p>13 with -- unless someone legitimately did something</p> <p>14 wrong, affirmatively did something wrong, it was</p> <p>15 never at the forefront of anybody's concern, but the</p> <p>16 Karl Hinkebein case took an overworked public</p> <p>17 defender who also had medical issues, according to</p> <p>18 the published opinions, and faulted him for not being</p> <p>19 able to perform. And, essentially, what that did, in</p> <p>20 my mind, was faulted him for not being able to</p> <p>21 overperform with a grossly excessive caseload in the</p> <p>22 appellate setting, which is different than a grossly</p> <p>23 excessive caseload in the trial setting because</p> <p>24 there's different duties involved, vastly different.</p> <p>25 But having worked in appellate for awhile, I do</p>	<p style="text-align: right;">Page 168</p> <p>1 defender system, especially after listening to the</p> <p>2 oral argument, and I went as far as to read the</p> <p>3 appellate briefs on either side. It was very</p> <p>4 disturbing, and we drew a line in the sand.</p> <p>5 Q. When did that decision come down,</p> <p>6 within the last two months?</p> <p>7 A. Well, I think my letter went out</p> <p>8 October 2nd, so it was shortly -- probably took me a</p> <p>9 week, only because I was so busy, not through lack of</p> <p>10 interest, to complete the letter --</p> <p>11 Q. Okay.</p> <p>12 A. -- my version of the letter. And as</p> <p>13 soon as the opinion came out, I sent word to my</p> <p>14 attorneys that I would be doing everything I could to</p> <p>15 protect our bar licenses, and I encouraged them to do</p> <p>16 the same thing, and to listen to the opinion and</p> <p>17 educate themselves, not just what we were talking</p> <p>18 about in the lunchroom or, you know, over the</p> <p>19 watercooler, if we had one.</p> <p>20 Q. How did the MSPD central office</p> <p>21 respond to the decision?</p> <p>22 A. Well, I believe it was a supportive</p> <p>23 response, at least that's the impression I got from</p> <p>24 the direction I've seen taken by our director, and</p> <p>25 he, I think, directed a memo or a letter out, I</p>

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<p style="text-align: right;">Page 169</p> <p>1 haven't read that in quite awhile, educating us about 2 the opinion and that sort of thing. 3 And then thereafter, myself and my 4 co-director, Ms. Brown, as well as our director, 5 Mr. Barrett, scheduled meetings with the presiding 6 judges of Clay County and Platte County, I think it 7 was on the same day, and then inviting any other 8 judge with, albeit, short notice to come to wherever 9 we were holding those meetings, you know, in the 10 relative jurisdiction of Clay and Platte, to discuss 11 public defender concerns. And that meeting was held 12 on that day and, you know, things were discussed that 13 could possibly try to address the workload concerns. 14 Q. Did you talk to your staff about what 15 you felt like that decision meant and what maybe 16 precautions they needed to take before you got a memo 17 from the central office? Did you have discretion, 18 you felt, to do that, just based on your role as the 19 district defender? 20 A. I didn't think I needed discretion. 21 I've got a bar license, and I did it before I got the 22 memo. 23 MS. WILCOX: All right. Since we're 24 talking about it, I'm going to hand you what's going 25 to be marked as Exhibit 15.</p>	<p style="text-align: right;">Page 171</p> <p>1 the public defender in both Clay and Platte. Insofar 2 as Clinton County is concerned, I did not hear back 3 from that judge. 4 Now, in defense of that, I'm not 5 accusing him of anything. We only cover a tiny 6 fraction of the 43rd Judicial Circuit, and I believe 7 communication was through -- for the Clinton County 8 judiciary was made through, I'm presuming through the 9 Chillicothe trial office that handles the remaining 10 seven, eight counties, the majority of those, 11 obviously, all but one, so -- but because we cover 12 that one, it was my duty to notify him, too. So I 13 haven't heard from that presiding judge. I have 14 heard from some of the other judges in Clinton County 15 and 43rd, but not the presiding judge, so -- but, 16 yes, we have continued to be appointed by some of 17 judges in those jurisdictions, after my letter. 18 Q. Are you aware of communications 19 between other district -- public defender district 20 offices and courts throughout the state regarding the 21 Hinkebein decision? 22 A. Somewhat aware, I mean, I don't know 23 if I'm aware of every communication that was made, 24 but I've talked to friends and seen the letter 25 directed by the district defender out of Columbia,</p>
<p style="text-align: right;">Page 170</p> <p>1 (Exhibit 15 was marked for identification.) 2 Q. (BY MS. WILCOX): Can you identify 3 this document for me? 4 A. Sure. Exhibit 15 is a copy of a 5 letter dated October 2nd, 2017, that I directed out 6 to the presiding judges of Clay, Platte and Clinton 7 County in relation to the Karl Hinkebein decision. 8 Q. Can you summarize what you're telling 9 the judges, what it says? 10 A. Well, let's see. Probably no way to 11 quickly summarize that. It's pretty detailed, but -- 12 Q. And we can read it, so, yeah, I don't 13 want you to -- 14 A. I think -- the only thing I was trying 15 to convey to the judges was how, as a result of the 16 Hinkebein decision, at least as far as I was allowed 17 to proceed, we were going to try to defend our law 18 licenses any way that we thought we needed to. 19 Q. Have the judges that you directed this 20 letter to continued to appoint public defenders? 21 A. Well, I should note that I 22 carbon-copied all the other judges and a commissioner 23 in Clay and Platte and Clinton, so not just the 24 presiding judge. So there have been some -- there 25 have been some judges that have continued to appoint</p>	<p style="text-align: right;">Page 172</p> <p>1 Missouri. I think that's the only other letter I've 2 seen, but I can't be certain of that. All I can 3 recollect right here. I remember I saw that letter 4 before I composed mine. 5 Q. And have you gotten any word from 6 people you've spoken with about what other judges who 7 have maybe been alerted to the situation and to the 8 concerns of the public defenders office are doing if 9 they're continuing to appoint attorneys? 10 A. Well, I think there's been newspaper 11 articles about it, so it's no secret. The 16th 12 Judicial Circuit has not taken it well, and I think 13 the reaction by the presiding judge, who shall remain 14 nameless in my videotaped deposition, characterized 15 the public defender antics as horse shit, if my 16 recollection serves me. 17 Q. I think that's correct. 18 Have you, internally, to the extent 19 you can discuss it, have you guys been talking with 20 other offices about the decision and what it means 21 for the attorneys? 22 A. I know I've had conversations with 23 other managers, but it's just been probably more 24 about the Hinkebein decision than anything else. 25 Q. Do you know anybody who has resigned</p>

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<p style="text-align: right;">Page 173</p> <p>1 because of it or know anybody who has resigned 2 because of it? 3 A. No one in my office has resigned yet 4 because of it, but every Monday morning is a 5 teetering edge, so -- and I have every reason to 6 believe that's going to happen, but I'll take it 7 as -- I'll take continuity as long as I can. And I 8 will say this about -- to be fair, some members of 9 the judiciary in Clay and Platte have attempted to be 10 cooperative and considerate. 11 Q. And you said you met with the two 12 presiding judges for Clay and Platte? 13 A. Shortly after the letter went out, 14 myself, my Deputy District Defender Ara Bailey Brown 15 and our director, Michael Barrett, met with the 16 presiding judge, Judge Sutton and Judge Van Amburg, 17 and any of the judges that were available in the 18 courthouse there that, you know -- and, again, it was 19 short notice, so there was just one or two available 20 in each jurisdiction in that meeting. There was a 21 full discussion about our concerns and the Hinkebein 22 decision and what the judges could do to help and 23 that sort of stuff. 24 Q. What's your takeaway from that 25 meeting? What did they say they could do to help or</p>	<p style="text-align: right;">Page 175</p> <p>1 A. I really don't know. I would be 2 speculating. I think the emphasis was on pro bono. 3 Q. Not a long-term solution, but kind of 4 a -- it sounds like it was more of a short-term fix 5 to, right now, alleviate the caseload that you have 6 so that you hopefully don't lose all the attorneys 7 you have in your office? 8 A. That's probably fair. 9 Q. I have this document that was 10 previously marked as Exhibit 5. Have you seen this 11 document before or heard of its existence? And can 12 you kind of identify what it is that you're looking 13 at? 14 A. Sure. Exhibit 5 is titled 15 "Suggestions in Support of Writ of Prohibition and/or 16 Mandamus." I think -- I'm not positive, but I think 17 I've seen this on a database, so if I would have 18 viewed it it, in all likelihood, would only have been 19 electronic. I don't know that I have printed it out. 20 Q. Okay. 21 A. But I'm not even certain I've seen it. 22 Q. Okay. So it looks like it's a form 23 from the public defender system of a writ that would 24 allow someone to object to an appointment. Is this 25 something that's ever been filed in your office or by</p>
<p style="text-align: right;">Page 174</p> <p>1 what has been done in your opinion to alleviate? 2 A. Well, it was made clear that my 3 concern would be not only would we be in the 4 situation that we are now, and it's no secret the 5 judges see that our cases linger forever. They're 6 the ones granting continuances. They see -- I 7 believe they genuinely see how hard the attorneys are 8 working. They certainly see the parsement of numbers 9 compared, in a totality sense, to the public defender 10 attorneys that are practicing before them, so I think 11 they're mindful of the fact that my concern is with 12 resignations, and then we will all be in a worse 13 position than we are now, which is a pretty dire 14 position. 15 Q. Did they have any concrete suggestions 16 of what could be done? 17 A. Well, each Clay and Platte are -- 18 attempted to contact -- sort of sent messages through 19 the private bar to seek out names of attorneys in the 20 private setting that would be willing to take on pro 21 bono -- some pro bono public defender indigent cases, 22 perhaps even at a reduced fee, so I'll say pro 23 bono/reduced fee. 24 Q. Do you know who would pay the fee, 25 where that would come from, if you know?</p>	<p style="text-align: right;">Page 176</p> <p>1 someone in your office? 2 A. No, not my office. 3 Q. Okay. All right. I have another 4 exhibit that is going to be not previously marked, 5 and this is now going to be exhibit -- 6 MS. SHIPMA: 16. 7 MS. WILCOX: Thank you. 16. 8 (Exhibit 16 was marked for identification.) 9 Q. (BY MS. WILCOX): And if you could 10 just identify what it is, it's a similar form 11 document -- 12 A. Sure. 13 Q. -- and let me know if you've seen it 14 before. 15 A. Sure. Exhibit 16 is a motion to 16 withdraw due to excessive caseload. 17 Q. Have you seen this document before, to 18 your recollection? 19 A. Again, I may have. It's possible I 20 saw this on the electronic database but, again, I'm 21 not even sure I printed it. 22 Q. So to your knowledge, has an attorney 23 in your office ever filed this kind of motion, motion 24 to withdraw due to excessive caseload? 25 A. No, not to my knowledge.</p>

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<p style="text-align: right;">Page 177</p> <p>1 Q. We have talked about this, I think, in 2 a lot of your other answers, but we're going to focus 3 on what I'm going to call the triage of cases, so if 4 an attorney in your office spends the amount of time 5 that he or she thinks is necessary to zealously 6 prepare a client's case, what happens to the other 7 clients? 8 A. Nothing except they're probably put at 9 a more disadvantageous position than they already 10 are. Conceivably, their witnesses disappear. 11 Conceivably, their alibi goes away. If they're in 12 custody, they're suffering loss of liberty longer if 13 they wind up not bonding or being, you know, 14 continuously placed in loss of liberty. Nothing 15 good. 16 Q. I think you used the term "triage" 17 earlier. Is that something that -- a word you would 18 use for what attorneys in your office do with their 19 cases? 20 A. It's a dirty word we use, yeah. We've 21 been using it for decades. 22 Q. Explain to me what you mean when you 23 say things are triaged. 24 A. Well, the analogy is often made to a 25 MASH unit where the sick and wounded come in, you</p>	<p style="text-align: right;">Page 179</p> <p>1 out of custody if it's possible. 2 What happens when you don't is what 3 you, essentially, have is you're creating 4 documentation for the prosecution because clients are 5 making recorded phone calls and writing. There's no 6 privacy in visiting with family. All of that is 7 recorded in the jurisdictions that I'm aware of and 8 accessible, fully accessible, by the prosecuting 9 attorney's office. So what we're left with is we get 10 some late discovery on a client that has been making 11 some jail calls, possibly incriminating information, 12 possibly not. It may be neutral, but we wouldn't 13 know until we take time to listen to them. And if 14 you're going to get them the Thursday before your 15 Monday trial, that's not really fair. But you 16 haven't really filed a motion to make sure that they 17 comply and give that to you in a timely, consistent, 18 within, you know, 48 hours of their recording. You 19 haven't done that because you've taken the one case 20 at the top of the pile, and you're working it and 21 you're providing -- that client is not getting first 22 class service. That client is getting service that 23 every client deserves, one lawyer, not a team of 24 lawyers, one lawyer. And that's what the 25 constitution guarantees.</p>
<p style="text-align: right;">Page 178</p> <p>1 deal with them as they come in best you can, and 2 usually there's a waiting period. And people are not 3 getting better while they're waiting while they're 4 not being treated. So the triage -- it's also could 5 be -- it's the fires that we put out every day and, 6 significantly, it's also the waiting at the dockets 7 for hours and the probation violation and the traffic 8 dockets. Because while those attorneys' times are 9 tied up with that, they're not investigating the 10 cases that might have an alibi. And I say "might" 11 because they haven't determined it yet because they 12 probably haven't read through the discovery. And 13 they also have clients who are sitting in jail whose 14 bond motions may have never yet been filed, certainly 15 not investigated, probably not investigated, and 16 hearings that haven't been held. 17 Now, from an optimistic sense, maybe 18 they -- maybe the judge reduces their bond, maybe 19 their family locates some money and they're able to 20 have pretrial detention out of custody. And it's 21 always better for any client, I believe, to work with 22 his or her attorney in an out-of-custody situation. 23 You know, pointing through the glass and trying to 24 demonstrate things, not good. It's always better to 25 have the client -- it's critical to have the client</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Do you think that the current 2 circumstances with caseload and resources are causing 3 violations of the rules of professional conduct in 4 your district by lawyers? 5 A. Can we take a break? 6 MS. WILCOX: Sure. 7 THE VIDEOGRAPHER: We're off the 8 record at 1:00 p.m. 9 (A brief recess was taken.) 10 THE VIDEOGRAPHER: We're back on the 11 record at 1:09 p.m. 12 Q. (BY MS. WILCOX): I'm going to 13 rephrase the question I asked you. 14 A. Okay. 15 Q. In the letter you sent to the court on 16 October 2nd which -- can you remind me the exhibit? 17 A. 15. 18 Q. 15. It's on the second page. In that 19 letter you say that you've instructed the assistant 20 public defenders in your office to notify you or your 21 deputy district defender if they believe accepting 22 new cases would materially limit their 23 responsibilities to existing clients so they can 24 ensure compliance with the rules of professional 25 conduct.</p>

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<p style="text-align: right;">Page 181</p> <p>1 That's true that you've asked the 2 attorneys in your office to do that? 3 A. That's true. 4 Q. Okay. And then can you just tell me 5 what -- how have you been assigning new cases that 6 have been coming in since this letter went out? 7 A. Since the letter went out, I think it 8 was -- it may have been within a week of the letter 9 going out. Trying to think. I think it probably was 10 the letter cutoff date. 11 Well, there's a period of time that we 12 created a waiting list. Immediately after the 13 letter, October 2nd, 2017, there was a waiting list 14 that was created or begun to be created, and 15 understand with a limited staff, that took a lot of 16 resources and redirecting them to creating the 17 waiting list because we still had to process 18 applications and find whether or not they were deemed 19 indigent, et cetera. 20 And then there was a short period of 21 time where we directed out letters to those folks who 22 were on the waiting list, and after a relatively 23 short period, some of the prosecuting attorney 24 authorities began to file -- either provided me with 25 a sample or actually filed a motion to -- the state's</p>	<p style="text-align: right;">Page 183</p> <p>1 represent John Doe's interest, but absent that single 2 exception, all of our other entries of appearances 3 are made under duress and in the unintentional 4 violation of the Rule 4. So everyone that was on the 5 waiting list is now assigned to me, and my entry of 6 appearance under duress was made. And then, of 7 course, there was a period of time, since we weren't 8 making the waiting list, still people were applying. 9 They were found to be indigent or they were found to 10 be nonindigent, and appointed by the court, and those 11 were also personally assigned to me under duress. 12 That's why I have nearly -- approaching 400. 13 Q. So there is no wait list right now. 14 You're just doing the entry under duress? 15 A. There is technically no wait list. 16 Clients are waiting for me, but they're not on a wait 17 list. 18 Q. Okay. When they were on a wait list 19 was it informal within your office, or maybe formal? 20 Informal is not the right way to describe it. 21 A. Well, I mean, we had a running list on 22 a database, and I think we might have provided a copy 23 of that list to one of the associate circuit judges 24 that, I think, asked for it. It was no secret. You 25 know, they just wanted to know. I think they were</p>
<p style="text-align: right;">Page 182</p> <p>1 motion in opposition or to show cause, and I think 2 what they were doing is voicing their belief that the 3 letter that I had sent out, perhaps others, was not 4 within -- not in compliance with the statute Chapter 5 600, and instead sought the court's relief to order 6 us to file entry in the case. And there was a 7 groundswell of information that came in informally 8 through other managers I've talked to and, frankly, 9 the other attorneys throughout the different offices, 10 and it was clear that some -- one or more judges, 11 their intention was to hold somebody in contempt. 12 They were clearly itching to do that. 13 I decided to eliminate the wait list, 14 and continue to assign Clinton County cases to the 15 single attorney that I've assigned to Clinton County 16 duties and clients, and those entries of appearances 17 have been modified. I can't remember the exact 18 language, but it, I believe, said something along the 19 lines of entry of appearance under duress and in the 20 unintentional violation, contraindication of Rule 4, 21 I think, or words to that effect. 22 It's a form motion. It is, I 23 believe -- with the exception of clients that we -- 24 if we represent John Doe now, and John Doe picks up a 25 new case, we enter in that case because we already</p>	<p style="text-align: right;">Page 184</p> <p>1 concerned with the count, maybe. I'm not sure what 2 their concerns were but, yeah, I mean, it existed. 3 It no longer exists. 4 Q. How long do you think that it must 5 have -- 6 A. I mean, there was -- we had letters 7 that were printed that never went out. That's how 8 short duration of a waiting list we had. 9 Q. Okay. 10 A. But yet some of them got it, and 11 clients told me no, I'm on a waiting list. Well, you 12 were for a brief period of time. 13 Q. Anyone who was on it has since now -- 14 some entry of appearance has been filed in that case 15 in your office, waiting, but has been assigned? 16 A. Or they represented themselves, 17 proceeded pro se, or they hired private counsel. 18 Q. Okay. 19 A. There's probably a fraction of those 20 that did that. 21 Q. So the -- in your district, the 22 private bar appointments, are they happening yet or 23 that has not happened yet, that was just a 24 discussion? 25 A. There's -- we have a list from the</p>

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<p style="text-align: right;">Page 185</p> <p>1 Clay County and a list from Platte County, and my 2 staff is told that when people apply that are not -- 3 people apply that are not qualified, we provide them 4 a list, and explain, number one, that they have a 5 right to appeal our finding; to have the court 6 consider whether they're going to appoint us under 7 the statute. And if you're interested, here is a 8 list of lawyers who have voluntarily put their name 9 on the list that either represent pro bono or at a 10 reduced rate. 11 I didn't change the list as it came 12 from the courts or the court's clerk. If it said 13 "pro bono" on it, I didn't tinker with that language. 14 If it said "reduced rate," I didn't tinker with that 15 language. I didn't tinker with anyone. 16 Q. But you're saying these are for 17 defendants who your office has found don't qualify 18 for your representation? 19 A. Right, yeah. Because we can't turn 20 them away and say hey, call pro bono. I mean, under 21 the statute, they have the right to apply. We're 22 obligated to process them to deem -- to see whether 23 or not they fall within the indigent guidelines. 24 Q. So to date, there is no refusal of 25 cases from your office to the court?</p>	<p style="text-align: right;">Page 187</p> <p>1 A. I can't think of anything. I mean, I 2 may think about it later. I still haven't thought of 3 that immigration landmark case. 4 EXAMINATION 5 BY MR. RAMSEY: 6 Q. Good afternoon. 7 A. Good afternoon. 8 Q. My name is Steven Ramsey, again, and I 9 represent the State of Missouri and Governor Eric 10 Greitens. 11 If we could go back to your 12 experience, did you come straight from undergrad into 13 law school or was there a period of time in between? 14 A. I had a hard time getting into law 15 school, so there was a lapse of time, about five 16 years. 17 Q. And during that five years, what did 18 you do? What you were employed as or how did you 19 take up that time? 20 A. I had -- goodness. Goes back a ways. 21 I worked for my family business. I worked for the 22 IRS. I think that's probably it. 23 Q. And how would you classify your work 24 for the IRS? 25 A. Started as a seasonal tax examiner,</p>
<p style="text-align: right;">Page 186</p> <p>1 A. When I last left the office, there 2 wasn't any refusal of cases. We've been here awhile. 3 Q. Are you familiar with the Missouri 4 Coalition for the Right to Counsel? 5 A. I've heard of it. 6 Q. Okay. Do you understand it to be in 7 existence? 8 A. I don't know anybody that's affiliated 9 with it. 10 Q. Okay. 11 A. So other than having read the phrase, 12 the title, I don't -- 13 Q. So that program is not alleviating the 14 amount of cases you have in your district; is that 15 fair? 16 A. Not to my knowledge. 17 Q. Okay. 18 A. I'm not even sure what it is. Let's 19 just say this: It's not alleviating it enough. 20 Q. Okay. That is bringing me to the 21 conclusion. If there's anything else that you think 22 we should know regarding your ability or the ability 23 of your district to provide effective representation, 24 I would open it up for you to share that with me, but 25 I have no other questions.</p>	<p style="text-align: right;">Page 188</p> <p>1 and I showed up, so they kept me. 2 Q. And then so from that period, you went 3 to law school. Did you immediately -- and I 4 apologize if I missed this. Did you immediately 5 begin in private practice for, I believe, four years? 6 A. No. My first job was with the 7 Missouri Public Defender System as an attorney. 8 Q. And then was there a period that you 9 did leave and then went into private practice? 10 A. Right. About five years with the 11 public defender -- four years, 11 months -- and then 12 two years with private practice, a law firm downtown 13 Kansas City, Missouri, doing insurance defense, and 14 returned to the public defender as a manager in the 15 Saint Joe office and then the Liberty office. 16 Q. And then just briefly, what were your 17 degrees in or your degree from undergrad? 18 A. BA in history. 19 Q. In terms of your preparation, I 20 remember you testifying about the people you spoke 21 to, Counsel, and you reviewed the petition. What 22 other -- this is a big question, that's a broad 23 question. What other broad groups or classes of 24 people have you talked to in regard to your workload 25 and caseload concerns, other district defenders being</p>

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<p style="text-align: right;">Page 189</p> <p>1 an example or can you give broad classes?</p> <p>2 A. Sure. Judges, other members of the</p> <p>3 bar, you know, we see private members of the bar at</p> <p>4 the dockets. It's pretty much on our mind. Some may</p> <p>5 have said, "Hey, I volunteered" in relation to</p> <p>6 whether it was Clay or Platte, their call for pro</p> <p>7 bono. I've had a couple of folks do that.</p> <p>8 Q. Have you been in contact with any</p> <p>9 organizations or nonprofits?</p> <p>10 A. In connection with the crisis of the</p> <p>11 public defender system?</p> <p>12 Q. Correct.</p> <p>13 A. I don't think so.</p> <p>14 Q. How about the press, any news, radio,</p> <p>15 et cetera?</p> <p>16 A. I spoke -- I'm trying to think of when</p> <p>17 I spoke -- I'm trying to actually recall whether or</p> <p>18 not this was on or off the record.</p> <p>19 Q. And if you're unsure, it's okay to not</p> <p>20 disclose that as well.</p> <p>21 A. Well, I will say I have talked to</p> <p>22 various members of the press, historically, about the</p> <p>23 public defender crisis, caseload crisis, workload</p> <p>24 crisis.</p> <p>25 Q. How about within the last year or so?</p>	<p style="text-align: right;">Page 191</p> <p>1 my particular history with the governor's office is</p> <p>2 continual disappointment with the previous governor</p> <p>3 with vetoing legislation, with withholding funds with</p> <p>4 Governor Nixon. My only understanding and</p> <p>5 appreciation for Governor Greitens is that he did not</p> <p>6 follow in the path of his predecessor, Governor</p> <p>7 Nixon, and, with our fingers crossed, did not</p> <p>8 withhold funds. So to that extent, I believe those</p> <p>9 that can appreciate the budgetary limitations are</p> <p>10 grateful that those funds haven't been withheld.</p> <p>11 My understanding is as a result of</p> <p>12 Governor Greitens not doing what Governor Nixon had</p> <p>13 done time and time again, allowed that additional</p> <p>14 funding to the public defender system, and the</p> <p>15 system, through, I believe, extensive examination of</p> <p>16 how to maximize resources decided, and I agree, that</p> <p>17 that could be best utilized by resourcing those to</p> <p>18 contract private bar who agree to act in the public</p> <p>19 defender capacity and cover conflict counties to</p> <p>20 reduce our windshield time and everything else that</p> <p>21 would be affiliated with driving out to the wild blue</p> <p>22 yonder and farther and farther away from your offices</p> <p>23 in order to provide indigent defense.</p> <p>24 As far as the future, I can only</p> <p>25 remain hopeful. I'm not an expert on the legislature</p>
<p style="text-align: right;">Page 190</p> <p>1 A. They call me sometimes, but I don't</p> <p>2 have any direct recollection of it being in the last</p> <p>3 12 months unless it would have been -- I'm recalling</p> <p>4 something with KCUR, but I'm not sure. They called</p> <p>5 once about the placement of a judge, and that may</p> <p>6 be -- which would, of course, have been totally</p> <p>7 unrelated to the public defender issues.</p> <p>8 Q. There was some conversation concerning</p> <p>9 the funds that were appropriated by the general</p> <p>10 assembly to the Missouri State Public Defender System</p> <p>11 for the conflict counsel.</p> <p>12 Do you recollect that testimony you</p> <p>13 gave earlier?</p> <p>14 A. Yes.</p> <p>15 Q. Was I right to hear you or to</p> <p>16 understand you saying that you were not confident</p> <p>17 that those funds would still be there in subsequent</p> <p>18 years?</p> <p>19 A. Sure. Can I answer that fully?</p> <p>20 Q. Sure.</p> <p>21 A. Okay. When I call them conflict</p> <p>22 counsel money, if you will, it's not up to me how</p> <p>23 they're spent. I think it's up to our director how</p> <p>24 it's utilized and funneled out. I'm grateful that</p> <p>25 it's funneled out for that purpose. The history --</p>	<p style="text-align: right;">Page 192</p> <p>1 other than every year they submit a budget. Other</p> <p>2 than that, I'm used to -- frankly, I'm used to</p> <p>3 getting bad news. This is the first good news I've</p> <p>4 gotten in quite a spell.</p> <p>5 Q. In your experience and knowledge of</p> <p>6 the budgetary system who appropriates funds in the</p> <p>7 Missouri state system?</p> <p>8 A. Not an expert on that. Don't care to</p> <p>9 speculate.</p> <p>10 Q. What is your understanding of the</p> <p>11 withholding process that you mentioned about the</p> <p>12 governance?</p> <p>13 A. There was at least two different</p> <p>14 times, if not three, that we were -- "we" being the</p> <p>15 public defender system management, had communicated</p> <p>16 that this money was requested, this money is in this</p> <p>17 committee, that committee, that sort of thing.</p> <p>18 Again, I don't understand it. Until they tell us</p> <p>19 it's ours, you know, I don't --</p> <p>20 Q. I'm sorry. I apologize. Which</p> <p>21 committees? I interrupted you. I apologize for</p> <p>22 that.</p> <p>23 A. That's okay. I just used that as an</p> <p>24 example. I don't even know if it goes to committee,</p> <p>25 so you won't hear me critique the legislature other</p>

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<p style="text-align: right;">Page 193</p> <p>1 than to say they need to give us more money. I won't</p> <p>2 be more specific than that.</p> <p>3 Q. I understand. So I guess my question</p> <p>4 is your understanding is that the legislature is the</p> <p>5 one to appropriate the money?</p> <p>6 A. Yeah, I guess so. I can't disagree</p> <p>7 with that.</p> <p>8 Q. Okay. Now, you talked a little bit</p> <p>9 how -- so you have 12 attorneys right now?</p> <p>10 A. Including myself, yes, sir.</p> <p>11 Q. Including yourself.</p> <p>12 And you were asked in an ideal world</p> <p>13 what you need, -- you think you would need to have a</p> <p>14 reasonable caseload. And if I remember correctly,</p> <p>15 your answer was 12 more attorneys or to double what</p> <p>16 you currently have; is that correct?</p> <p>17 A. That's my estimate, yes.</p> <p>18 Q. And that basis was on your experience?</p> <p>19 A. It's based on two, two factors. One</p> <p>20 is my experience over decades and, two, on my</p> <p>21 reliance on the public defender assessment and the</p> <p>22 budgets they put out each year and when they talk</p> <p>23 about we have X number of attorneys which I believe</p> <p>24 are in excess of 300, and we need in excess of 300</p> <p>25 more. So I trust their analysis, but in terms of</p>	<p style="text-align: right;">Page 195</p> <p>1 make it at any point, my co-manager can make it at</p> <p>2 any point, but in terms of the nonmanagers, the</p> <p>3 two -- the two clerks that I -- I don't want everyone</p> <p>4 making that decision, so I have two that do it.</p> <p>5 Q. Do those two have any specific</p> <p>6 training in that regard or how do you go about</p> <p>7 trusting those two as opposed to just everyone making</p> <p>8 that determination?</p> <p>9 A. It's only recently been the two, quite</p> <p>10 honestly. Primarily, before that, it was the one who</p> <p>11 preceded me in the office, so she's been there</p> <p>12 probably around 20 years, and was a court clerk</p> <p>13 before that. Again, she's not a statistician, but</p> <p>14 she's familiar with the poverty guidelines, but</p> <p>15 that's really probably what we go off, the poverty</p> <p>16 guidelines, as a starting point in terms of income</p> <p>17 and assets.</p> <p>18 Q. Do you have a sense of -- this isn't a</p> <p>19 term of art, but do you have a sense of a rejection</p> <p>20 rate for those who apply for services from the</p> <p>21 system?</p> <p>22 A. Not that I can put a number to. I</p> <p>23 could probably just explain it better than that if</p> <p>24 you want.</p> <p>25 Q. Please.</p>
<p style="text-align: right;">Page 194</p> <p>1 what I personally believe, sure, we could absolutely</p> <p>2 use that. Were we ever going to get that? No.</p> <p>3 Q. And so your understanding of how many</p> <p>4 attorneys you need comes directly from central office</p> <p>5 as opposed to being you having a history in</p> <p>6 statistics or management or some other independent</p> <p>7 basis?</p> <p>8 A. You didn't listen to my question. I</p> <p>9 said it came from two factors.</p> <p>10 Q. Uh-huh.</p> <p>11 A. One was my reliance on the management</p> <p>12 studies that were done, but, more importantly, on my</p> <p>13 decades of experience.</p> <p>14 Q. And as your experience as being a</p> <p>15 manager and being --</p> <p>16 A. Manager, but not a statistician,</p> <p>17 correct.</p> <p>18 Q. Let's take a few steps in a different</p> <p>19 direction.</p> <p>20 A. Okay.</p> <p>21 Q. When it comes to the determination of</p> <p>22 indigency, who makes that determination on your</p> <p>23 staff, specifically?</p> <p>24 A. I have two of my formally titled</p> <p>25 clerks that are allowed to do that. I mean, I can</p>	<p style="text-align: right;">Page 196</p> <p>1 A. I can give that a stab.</p> <p>2 I think our office, the Liberty</p> <p>3 office, and I don't know this for a fact, but I get a</p> <p>4 sense that our office takes more steps to attempt to</p> <p>5 verify, spot check, income, assets. We also</p> <p>6 sometimes -- if for whatever reason we use the phrase</p> <p>7 smell of money. If we think there's assets there</p> <p>8 that they're not telling us about, as good guardians</p> <p>9 of the taxpayers' pocketbooks, we're going to look a</p> <p>10 little further, and we're not bashful about telling</p> <p>11 the courts to wait. The courts aren't always excited</p> <p>12 about that, but they have no choice but to wait</p> <p>13 because under the statutory scheme of Chapter 600, I</p> <p>14 have the right to conduct an independent</p> <p>15 investigation.</p> <p>16 There are at present -- and understand</p> <p>17 I don't have sufficient staff to do this, but I</p> <p>18 utilize and take them away from doing other things,</p> <p>19 important things, to do this. We have -- we joke in</p> <p>20 our office that we have a financial investigation</p> <p>21 unit. It's not really a unit. I have one secretary</p> <p>22 not of which who is authorized to make the</p> <p>23 determination, but she's the one who is going to do</p> <p>24 the processing beyond if someone says they apply or</p> <p>25 if someone says let's -- or they qualify, let's do</p>

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<p style="text-align: right;">Page 197</p> <p>1 some -- we call it Chapter 600 investigation. And I</p> <p>2 have a document we file with the court that's</p> <p>3 entitled "Chapter 600 Investigation Pending," and we</p> <p>4 say the aforesaid has made application and is</p> <p>5 currently -- the financial investigation is being</p> <p>6 performed pursuant to Chapter 600, whatever number</p> <p>7 applies.</p> <p>8 We have -- we contact the Missouri</p> <p>9 Department of Labor. Again, this is spot check.</p> <p>10 This is not on every application. We wouldn't be</p> <p>11 able to -- we would not be able to function to do</p> <p>12 anything else because we get so many applications.</p> <p>13 Okay. And when we spot check that, we provide the</p> <p>14 name of the applicant, the social security number of</p> <p>15 the applicant, and we ask for the past four quarters</p> <p>16 or last year's, but nothing more extensive than that</p> <p>17 because the recently is what we want because we know</p> <p>18 that's all the judge is necessarily going to care</p> <p>19 about. If they made money two years ago, it's gone.</p> <p>20 That doesn't -- you know, if they were out of a job</p> <p>21 for a year, we're going to be appointed. We're</p> <p>22 trying -- we're trying to limit our involvement, and</p> <p>23 not be taken advantage of for somebody who just wants</p> <p>24 a free lawyer.</p> <p>25 Now, most frankly, most of the people</p>	<p style="text-align: right;">Page 199</p> <p>1 Because of the economy, salaries or</p> <p>2 fees have taken a dip because of the glut of lawyers,</p> <p>3 unfortunately. The economy has never fully recovered</p> <p>4 I don't think. It's gotten better, but never fully</p> <p>5 recovered for members of the bar, but it has</p> <p>6 created a -- there's some lowballers out there, and</p> <p>7 we're absolutely fine with people charged with</p> <p>8 criminal events hiring those members of the bar who</p> <p>9 can do a sufficient job to represent them. We're</p> <p>10 trying to encourage them to do that.</p> <p>11 The judges see that. Some of the</p> <p>12 judges are very patient with that. Some are not as</p> <p>13 patient, but the ones that aren't as patient, we make</p> <p>14 it clear that they really don't have a choice.</p> <p>15 Q. Is it your sense that your district --</p> <p>16 forgive me if I'm misunderstanding, but your district</p> <p>17 has probably more or potentially more verification of</p> <p>18 resources than potentially other districts?</p> <p>19 A. Well, when I look at Exhibit 14,</p> <p>20 understand that my assessment is purely speculation</p> <p>21 because I have no idea what most of these folks do,</p> <p>22 but I just assume that they don't have any more</p> <p>23 resources than me to do -- to serve such a function.</p> <p>24 As to what they do independently, I</p> <p>25 really don't have any firsthand knowledge of it, but</p>
<p style="text-align: right;">Page 198</p> <p>1 who apply for us are dirt poor. They don't have much</p> <p>2 money for anything, but even if it's a small fraction</p> <p>3 of cases that we can avoid, okay, we want to try to</p> <p>4 avoid them because it's wrong to represent them to</p> <p>5 give them a free lawyer when they don't deserve one.</p> <p>6 The other thing is that motivates</p> <p>7 them. If they're on the curve and they have it, but</p> <p>8 it really would be a financial imposition or might</p> <p>9 set them back a little bit, which a lawyer should, we</p> <p>10 do the best we can to try to motivate them to do</p> <p>11 that.</p> <p>12 Now, they still have an obligation to</p> <p>13 attend every court appearance, whether they're in</p> <p>14 custody or out, but what I've seen is for the small</p> <p>15 fraction that we spot check -- and we're trying to</p> <p>16 make it a larger number, but it's hard to do with the</p> <p>17 staff we have -- we have a portion of that that falls</p> <p>18 off, and what they do is hire private counsel.</p> <p>19 Sometimes they represent themselves. They're not</p> <p>20 doing that in serious cases. They're doing it in</p> <p>21 cases where they have a bad case and they're going to</p> <p>22 repay the bad check. They're doing that sometimes in</p> <p>23 driving while suspended or revoked, and sometimes</p> <p>24 they're going to get the exact same outcome we do,</p> <p>25 but many times they're hiring private lawyers.</p>	<p style="text-align: right;">Page 200</p> <p>1 I know that it's a time crunch, and it takes away</p> <p>2 from -- because it's not the first time we've been</p> <p>3 doing it. Even something as simple as running a real</p> <p>4 estate check and trying to see and doing some</p> <p>5 research with that, and even title search with</p> <p>6 vehicles, sometimes, every now and then, it saves us</p> <p>7 from a case, but it's an inordinate amount of</p> <p>8 resources. It might be easier to handle the case,</p> <p>9 but it wouldn't be easier on the attorney. It's a</p> <p>10 burden on the staff, though.</p> <p>11 Q. Would you say it's common to reject an</p> <p>12 application? Is that something that comes through</p> <p>13 every day that you see a rejection or -- I'm trying</p> <p>14 to get a sense of how often your district turns away</p> <p>15 applications.</p> <p>16 A. I know that there's a database that</p> <p>17 seeks to record the application, and whether or not</p> <p>18 the indigency finding is made by the public defender</p> <p>19 system or if it's instead appointed by the court. So</p> <p>20 I would have to defer to the historical accuracy of</p> <p>21 that.</p> <p>22 Q. Who has the final say? So if the</p> <p>23 support staff member looks at an application and says</p> <p>24 yes, this person is in -- is there an independent</p> <p>25 control there, a monitoring, or do you all trust the</p>

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<p style="text-align: right;">Page 201</p> <p>1 discretion of that support staff or if it's yourself</p> <p>2 making that determination?</p> <p>3 A. I make it clear to my support staff</p> <p>4 that their extra effort is there to limit cases and</p> <p>5 to make sure that people who don't deserve us don't</p> <p>6 take advantage of taxpayers' funds. So, if anything,</p> <p>7 they're going to err on the side of embarrassingly</p> <p>8 rejecting people.</p> <p>9 Q. And so when that support staff rejects</p> <p>10 a person, hypothetically speaking, does that</p> <p>11 rejection stand or is there someone else or yourself,</p> <p>12 for instance, go back and look over the application</p> <p>13 and verify it?</p> <p>14 A. If it's rejected, that's good by me.</p> <p>15 That's called a good call only because the applicant</p> <p>16 has the right, and we advise them of the right, or</p> <p>17 try to remember to advise them of the right every</p> <p>18 time, and, frankly, if we don't, which we seek to,</p> <p>19 the courts do and, quite often appoint us. But that</p> <p>20 just depends. And that's going to differ from judge</p> <p>21 to judge.</p> <p>22 Q. You alluded to this potentiality</p> <p>23 earlier, but say a person has three other cases,</p> <p>24 criminal cases, and they have private counsel on</p> <p>25 those three cases --</p>	<p style="text-align: right;">Page 203</p> <p>1 A. Can you be more specific?</p> <p>2 Q. Sure. So you -- let's say that</p> <p>3 there's five cases, and I'm trying to get a sense if</p> <p>4 that means there are five criminal defendants or if</p> <p>5 that's saying there are five independent charges?</p> <p>6 A. Sure.</p> <p>7 Q. So I'm trying to understand the</p> <p>8 categorization of a case.</p> <p>9 A. Okay. As I look on our database, I'll</p> <p>10 see, you know, John Doe, and see if he has any open</p> <p>11 cases. Now, John Doe may have -- and I break out</p> <p>12 that CR number. He may have -- he may have several</p> <p>13 counts on there, and I believe that would be tallied</p> <p>14 as one case. He may have -- it may be the kind of</p> <p>15 case where they threaten to charge additional counts,</p> <p>16 and that's why the numbers really -- you can't be</p> <p>17 guided by the numbers, not safely, because if you</p> <p>18 have one count, and they're threatening the other</p> <p>19 four, well, the attorney is working the other three.</p> <p>20 It's not fair to say we're only working the one</p> <p>21 because they have to be working all three in order --</p> <p>22 for example, in order to negotiate that case, I</p> <p>23 require the attorneys -- and I think it's an</p> <p>24 obligation under the rules -- to get the discovery</p> <p>25 for the other three controlled buys if they're</p>
<p style="text-align: right;">Page 202</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- and they catch a fourth case. Does</p> <p>3 the virtue of them having the other three counsel, is</p> <p>4 that a factor that goes into whether or not they are</p> <p>5 indigent for that fourth case?</p> <p>6 A. Absolutely. Part of what our process</p> <p>7 is -- and that's why the judges get frustrated.</p> <p>8 You've got the application. What else is there to</p> <p>9 do? What our staff does is -- and this I don't know</p> <p>10 whether or not other offices do. I would encourage</p> <p>11 them to do it, but I don't know if they have the time</p> <p>12 or resources to do it -- is we go to CaseNet, and we</p> <p>13 don't check every jurisdiction, but we check the ones</p> <p>14 that are more likely to be involved, and to see if</p> <p>15 that person has charges. Okay? And we also look up</p> <p>16 the case or cases that they are alluding to -- some</p> <p>17 of them know, some of them don't -- on their</p> <p>18 application.</p> <p>19 If there's a way to connect them with</p> <p>20 private attorney at present or recently in that case</p> <p>21 or another, we're going to opt to find them not</p> <p>22 indigent. Then they have the right to appeal to a</p> <p>23 court.</p> <p>24 Q. Switching gears a bit. How would you</p> <p>25 define a case or a matter?</p>	<p style="text-align: right;">Page 204</p> <p>1 charged with the one. Because if part of the benefit</p> <p>2 of the bargain in pleading guilty is we won't charge</p> <p>3 you with these others, I want to make sure you've got</p> <p>4 cases on the others.</p> <p>5 Now, under that setting, we are</p> <p>6 working more than the computer reflects because</p> <p>7 there's uncharged cases. So it works both ways.</p> <p>8 Now, conversely, we also have traffic</p> <p>9 cases where the officer is mad at the person, and</p> <p>10 they've written every ticket imaginable. One extreme</p> <p>11 case that we've had, and it is extreme and it's never</p> <p>12 been recreated, is the officer wrote 30-plus tickets.</p> <p>13 Now, it's never happened. Usually it's more common</p> <p>14 to have one or two, maybe three or four.</p> <p>15 Q. Let's turn to that -- your caseload in</p> <p>16 particular.</p> <p>17 A. Okay.</p> <p>18 Q. Did I hear you correctly is that</p> <p>19 you're testifying that you represent clients that</p> <p>20 have or -- yeah, clients have felonies, A/B all the</p> <p>21 way through speeding and traffic?</p> <p>22 A. Speeding to murder.</p> <p>23 Q. Speeding to murder.</p> <p>24 Could you give a breakdown -- and I</p> <p>25 know you probably can't be precise without the</p>

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<p style="text-align: right;">Page 205</p> <p>1 numbers in front of you -- but what percentage is 2 where? How many do you have in the municipal court 3 with the traffic versus a felony or a misdemeanor? 4 A. We don't have any municipal court, but 5 we do handle -- the public defender system does 6 handle traffic cases in the associate circuit state 7 court setting. We have a lot. The office has a lot. 8 I, in particular, have -- I handle the traffic docket 9 in Platte County, so I'm going to have a high number 10 in there. One of my other attorneys will handle the 11 traffic docket in Clay. She'll have a high number on 12 that. Obviously, that isn't the limit of my 13 caseload, nor is it the limit of her caseload. 14 As far as what sort of cases I'm in 15 right now, I'm embarrassed to tell you I'm not even 16 sure. The secretaries are directed to file my entry 17 of appearance under duress. I then look at them, 18 begin to create memos to file to create some 19 semblance to the madness. 20 Q. Setting those aside, the ones that you 21 entered duress on, before that, before those rolled 22 in, about how many cases did you have at that point 23 in time, if you can remember? I know it's probably 24 been a few months. 25 A. I can't recall. I can guess, but I</p>	<p style="text-align: right;">Page 207</p> <p>1 Q. So impending trial dates would be a 2 factor? 3 A. Sure. 4 Q. Are there any other factors in terms 5 of this case has been continued for months or years? 6 Is there any sense of -- yeah, what other reasons 7 would your office have or you have to bring something 8 to the top of the pile? 9 A. If you look at it and you think the -- 10 if you think the discovery is complete, sometimes you 11 get a since -- sometimes you agree with the other 12 side, this is not -- you know, we agree the 13 prosecutor doesn't have this yet. We know we're 14 waiting for it. The court knows that. We know that 15 trial date is probably going to be continued. That's 16 a trial date, the file is not on fire because 17 everybody knows we're going to get it. Now, that's 18 assuming you have the kind of judge that is going to 19 give you the continuance you believe you deserve. 20 You don't always have those kind of judges, so it may 21 still be a flamethrower in that sense. 22 Other reasons might be -- you know, 23 when I talk about a Monday morning MASH, it's every 24 day for clients who either want a bond motion to be 25 filed because when they want it filed, the office of</p>
<p style="text-align: right;">Page 206</p> <p>1 don't want to do that. It was high, but I can't give 2 you a number. 3 Q. Sure. Let's talk a bit about the 4 triaging that you and your district go through on a 5 day-to-day basis. I think I had heard you testify 6 that it's not simply a first in, first out method, 7 but things rise to the top of the pile in different 8 ways. I'm curious as to those different ways 9 something can rise to the top of the pile. 10 A. A lot of it -- when we're talking 11 about putting out fires, a lot of it has to do with 12 trial date settings that you scheduled by courts. 13 That becomes -- that trial is on fire -- I mean, that 14 file is on fire because you don't know whether or not 15 you're going to get a continuance. You may have a 16 sense, based upon your experience and whatever 17 jurisdiction and judge it is because it could differ 18 not only by jurisdiction, but by judge. So those are 19 really -- because what you're talking about is, as 20 you know, bringing a jury in is taken serious by a 21 judge. And so it's really -- that's the judge's 22 priority, too, we have found. So if that means 23 that's going to be the judgment day for the client to 24 answer charges, by necessity, we've got to begin to 25 pay the attention that we have available to it.</p>	<p style="text-align: right;">Page 208</p> <p>1 chief disciplinary committee expects you to file it. 2 There's no excuse for not filing it. They take that 3 pretty seriously. 4 Now, that doesn't -- you don't get to 5 factor in whether or not you think the person has 6 money. You don't get to factor in whether or not 7 you've already asked for it a number of times. You 8 don't get to factor in whether or not the judge is 9 going to just say no. That takes time to do it, and 10 you've got to do it in order, frankly, to protect 11 yourself from the bar complaint. 12 Another thing, very frequent thing, 13 would be where the client has a probation officer. 14 Sometimes it takes awhile to get that, but once you 15 get the probation officer, you have an obligation, 16 under the rule, to examine all the state's evidence 17 that they have and that they've given you. If you -- 18 if you have it and you haven't looked at it, you need 19 to look at it so that becomes something that comes to 20 the top of the pile. Why? Because this man or woman 21 has an opportunity to get out of jail, especially if 22 they've been telling you, "I want to take the deal." 23 Right? Or even if they haven't been telling you 24 that, if it's probation, you want to maximize the 25 best for your client. So if you can get them out,</p>

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<p style="text-align: right;">Page 209</p> <p>1 but as a lawyer you have all the obligations to do 2 the things and make the checklist and make sure that 3 it's a submissible case, make sure there isn't any 4 defenses that you have not checked with your client 5 to make sure that that doesn't exist, and whether or 6 not they want to waive those rights, if there's any 7 suppression issues. Sometimes they're going to say, 8 "I don't care about that." 9 Q. Do you have any policies or procedures 10 that lay out the triage method, or is it one that you 11 have gained through experience that not necessarily 12 every attorney in your office has access to? 13 A. By definition, triage is without any 14 rules, so there's no policies. 15 Q. About how many cases come in per year 16 in your district if you have that off the top of your 17 head? If not, no worries. 18 A. I don't. 19 Q. Do you have a sense of within the past 20 year, either 2017 or 2016, how many cases your office 21 has tried? 22 A. Not off the top of my head, no, sir. 23 There would be statistics for that, but I wouldn't -- 24 I can't recall them. 25 Q. Do you remember -- I apologize for</p>	<p style="text-align: right;">Page 211</p> <p>1 expended for absolutely the appropriate reasons to 2 defend that man or woman's life and liberty, but then 3 it doesn't wind up getting tried. Some circumstances 4 may change, the plea offer may change, so we don't go 5 just by -- it's called trial division, but conducting 6 trials is absolutely not the only work we do. 7 Q. You testified earlier that there have 8 been excessive caseload and workload demand on the 9 system and your -- on those that you supervise and 10 yourself. 2005 was mentioned, but it's been there 11 for some time; am I correct in understanding that 12 testimony? 13 A. I agree with that, yes. 14 Q. At any point while you've been a 15 district defender, have you put on any trainings or 16 have known of any trainings that deal with workload 17 or caseload concerns? 18 A. I think our training department may 19 have had -- again, I don't -- quite honestly, I don't 20 have time to attend the training, but I do try to 21 glance at the syllabus, and I do have attorneys that 22 are newer to the system that attend those sometimes, 23 whatever the training are, in order to gain their CLE 24 hours for the year, or attempt to. 25 I think there are syllabus items that</p>
<p style="text-align: right;">Page 210</p> <p>1 interrupting you. 2 A. Sure. 3 Q. Can you recall your office taking to 4 completion one trial within the past year? 5 A. Oh, yeah, certainly. The only reason 6 I'm able to say that with definite is because we 7 got -- my co-manager and I got an e-mail that there's 8 a newsletter, and they wanted feedback on that, so I 9 happened to be there when she was responding, and it 10 was two trials, for example, that hadn't been 11 mentioned in the news, so that was -- but it's all -- 12 as that happens, the software picks that up, and 13 there are statistics, indisputable statistics, that 14 would verify whatever trials we've had. 15 Q. So at least one? 16 A. Oh, gosh, yeah. 17 Q. At least five? 18 A. Again, I can't -- I just can't -- I'm 19 not comfortable guessing. 20 Q. Sure. 21 A. But I will say this: The trials 22 itself could be a misleading factor, and here's why I 23 say that: Lots of things are worked up for trial, 24 and then they don't proceed to trial. That's an 25 inordinate amount of attorney work hours that's</p>	<p style="text-align: right;">Page 212</p> <p>1 deal with workplace stress, stuff like that, but I 2 couldn't say that under oath that it actually 3 existed. Training department would be the 4 appropriate person to ask about that. 5 Q. And that's for a systemwide training, 6 like the annual training that various public 7 defenders go through? 8 A. It would be put on -- if it exists, it 9 would be put on by the Missouri State Public Defender 10 training division or someone that they affiliate 11 with. 12 Q. But sitting here today, you have not, 13 as a district defender, put on any specialized 14 training for those you supervised? 15 A. I don't have time to. I probably 16 have -- let me go back to the earlier question. I 17 probably have attended management-related meetings 18 that deal with caseload, but it's not limited to just 19 caseload. It's also dealing with, you know, updates 20 in the case law or procedure and that sort of stuff, 21 but, invariably, caseload comes into the discussion. 22 Q. I apologize for being all over the 23 place. 24 A. No problem. 25 Q. I'm trying to maintain coverage.</p>

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<p style="text-align: right;">Page 213</p> <p>1 A. It's no problem.</p> <p>2 Q. Continuances, we talked about earlier,</p> <p>3 and I understand that judges have to grant those</p> <p>4 continuances. What is the longest period of time</p> <p>5 that you can recollect that a case was continued by</p> <p>6 your district or someone in your district?</p> <p>7 A. I probably hold that record outside</p> <p>8 the capital, I don't know anything about capital.</p> <p>9 And I'm not boasting about it, but it's frequently</p> <p>10 mentioned. Seven years to trial.</p> <p>11 Q. Turning to the funds that are</p> <p>12 available for various requests from assistant public</p> <p>13 defenders, your testimony earlier, I believe -- and</p> <p>14 correct me if I'm wrong -- is that you've never been</p> <p>15 turned down for a deposition when you, personally,</p> <p>16 requested funds for a deposition?</p> <p>17 A. I don't think I have. I have had to</p> <p>18 seek further clarification from a supervisor for a</p> <p>19 meteorologist one time. I remember that. And, you</p> <p>20 know, there's often clarification sought in order to</p> <p>21 make sure that there's a good record for the use of</p> <p>22 the taxpayers' funds, but in terms of someone telling</p> <p>23 me no, it's usually more of a discussion. I don't</p> <p>24 think I've -- I don't think I've ever been told no.</p> <p>25 There may have been a brief -- very brief freeze on</p>	<p style="text-align: right;">Page 215</p> <p>1 frankly, some of the good things and horrible things</p> <p>2 that come up during a deposition.</p> <p>3 Q. Have you ever given as a reason -- or</p> <p>4 sitting here today, can you recollect a reasoning for</p> <p>5 declining a request for a deposition solely based on</p> <p>6 funds and the availability of those funds?</p> <p>7 A. Like I said, I think there might have</p> <p>8 been that one time where there was a freeze or an</p> <p>9 encouragement, to -- but it was short-lived and a</p> <p>10 single event or single duration. It wasn't anything</p> <p>11 that was longstanding.</p> <p>12 Q. I apologize for the duplication of</p> <p>13 these questions --</p> <p>14 A. Sure.</p> <p>15 Q. -- but same question for expert</p> <p>16 testimony. Have you ever been denied expert</p> <p>17 testimony that you thought was important to your</p> <p>18 case?</p> <p>19 A. Outside of that meteorologist, which</p> <p>20 ultimately I gained permission to consult with, that</p> <p>21 would be the closest thing I could think of.</p> <p>22 Q. And have you ever denied -- I guess</p> <p>23 you just mentioned about how you denied some</p> <p>24 depositions, but have you denied expert testimony for</p> <p>25 similar reasons?</p>
<p style="text-align: right;">Page 214</p> <p>1 it years ago, but it really was a bump in the road.</p> <p>2 It wasn't anything like -- for the most part, the</p> <p>3 depositions that the attorneys seek the funds to</p> <p>4 conduct, there's funding there to conduct them. The</p> <p>5 real challenge becomes facilitating your workload in</p> <p>6 an efficient manner in order to get it to that point</p> <p>7 because that's a whole lot of -- I want them to be --</p> <p>8 I want them to be done with forethought and some</p> <p>9 strategy as opposed to I just want to do them to be</p> <p>10 doing them.</p> <p>11 Q. Have you, as a supervisor, ever</p> <p>12 declined someone who asked for funds for a</p> <p>13 deposition?</p> <p>14 A. Yeah.</p> <p>15 Q. What was the basis for that?</p> <p>16 A. Sometimes strategic, sometimes case</p> <p>17 related, sometimes because the attorney -- I didn't</p> <p>18 think the attorney had thought it out enough.</p> <p>19 Sometimes I didn't think there was a disadvantage to</p> <p>20 doing it in an interview setting instead. I mean,</p> <p>21 it's not often I do that, but sometimes if strategy</p> <p>22 is involved, then I'm not hesitant to intervene, but</p> <p>23 I do think the depositions are a good training tool,</p> <p>24 not just to find out about the case, but also for the</p> <p>25 newer lawyer to learn and see all the surprises and,</p>	<p style="text-align: right;">Page 216</p> <p>1 A. I don't think I did. We may have</p> <p>2 discussed whether the case was ready for it, so it</p> <p>3 may have been a timing issue, but I don't think I</p> <p>4 said -- I certainly didn't say, "No, you can't do it.</p> <p>5 We don't have the funding for the expert." It's more</p> <p>6 of a teaching tool and to make sure that the money is</p> <p>7 being used wisely.</p> <p>8 Q. Do you have a sense of if more</p> <p>9 depositions and expert testimony are utilized for</p> <p>10 felonies or for misdemeanors or sitting here today,</p> <p>11 do you not have a sense of that?</p> <p>12 A. I don't understand the question.</p> <p>13 Q. In your experience, do you utilize --</p> <p>14 do you -- are there more depositions for a felony</p> <p>15 A/B, for instance, as opposed to for a misdemeanor or</p> <p>16 is there no discernable difference between how many</p> <p>17 depositions are taken for a given case?</p> <p>18 A. It depends on the contents of the file</p> <p>19 more than the charge, actually. Now, there may be</p> <p>20 more DNA in a murder case overall, but in terms of is</p> <p>21 that felony going to be a greater expense or greater</p> <p>22 amount of time invested by the attorney? Not</p> <p>23 necessarily because we have some really, really -- we</p> <p>24 joke in the office about a misdemeanor that all of a</p> <p>25 sudden, because we're inside of it, it's like wow,</p>

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<p style="text-align: right;">Page 217</p> <p>1 this is worse than -- this is worse than a protracted 2 felony case because it gets so complicated, one thing 3 leads to another, you know. So you can't really 4 tell -- there's no such thing as just a misdemeanor, 5 is what I'm saying.</p> <p>6 Q. Is there or are there any policies 7 that prevent assistant public defenders from 8 requesting a deposition or expert based solely on 9 cost, for instance, the meteorologist is \$5,000, and 10 we only allow \$2,500 for this type of expert? Is 11 there any limiting factors in that sense?</p> <p>12 A. I don't -- I can't think of any. I 13 mean, it would go probably beyond me if it was an 14 issue of we've never spent that much on that type of 15 court reporter or expert or translator or something 16 like that. I know that we to utilize -- we try to 17 tend to lean towards the state-authorized contract 18 providers, for example, in the interpretive field, in 19 the court reporter field, that type of thing, to try 20 to maximize the funds.</p> <p>21 Q. Let's turn to the timekeeping that 22 you, in your office -- that your district engage in. 23 Is the extent of your timekeeping at this point in 24 time hours worked?</p> <p>25 A. Through the -- through the time sheet</p>	<p style="text-align: right;">Page 219</p> <p>1 not they ever conducted anything on that.</p> <p>2 As far as in office, we had a great 3 deal of discussion about -- I mean, I would have 4 attorneys that would come to me and say, "How should 5 I bill this?" Not bill it, but, you know, "How 6 should I allocate this? Should it be this, this or 7 this?"</p> <p>8 And I'm like, "Well, I think," you 9 know, so there would be those. It's subject to 10 interpretation even in the private setting.</p> <p>11 Q. Is there anyone tasked with monitoring 12 or supervising the current time-keeping system? I'll 13 rephrase.</p> <p>14 A. Sure.</p> <p>15 Q. Is the extent of approval right now 16 when they fill out their two-week time sheet and it 17 comes to you for ultimate approval?</p> <p>18 A. Well, the bimonthly time sheet goes to 19 the district defender. I can only tell you what I do 20 is I check it for accuracy. If I have -- I may be 21 the only one. I may be doing less than others, I 22 don't know, but if someone calls in sick, I save that 23 so that I can -- if there's a need to check that 24 against the time sheet. If there are hours where 25 annual leave has been requested, granted, then I have</p>
<p style="text-align: right;">Page 218</p> <p>1 it's done every two weeks or bimonthly, yes.</p> <p>2 Q. So at this point in time, there are no 3 further demanding fields for time-keeping by task or 4 case right now?</p> <p>5 A. That is correct.</p> <p>6 Q. When was the last time, if you can 7 remember, when the time-keeping was done in almost a 8 billable hours type of context?</p> <p>9 A. I'm not sure when that -- I would be 10 guessing, but I want to say a couple years, but 11 that's a guess.</p> <p>12 Q. Do you remember any training was -- 13 the purpose of the training was to teach assistant 14 public defenders, or any public defender, for that 15 matter, how to keep their time?</p> <p>16 A. By our training department, you mean, 17 or just --</p> <p>18 Q. Yeah, by the training department or by 19 a district defender by yourself or when you were not 20 a district defender, if anyone had ever put that on?</p> <p>21 A. Again, I'm going to presume, but I'm 22 not certain that the training division, perhaps 23 during a new attorney workshop, would have alluded to 24 that, but I'll defer to the training department 25 director to -- again, their syllabus and whether or</p>	<p style="text-align: right;">Page 220</p> <p>1 a note-keeping mechanism for that in order to try to 2 make sure that there aren't honest mistakes made by 3 the employees. And there are times when I send them 4 an e-mail and says, "Hey, let's talk about this time 5 sheet," and then I explain this or remind them of 6 that, and then they adjust accordingly.</p> <p>7 It doesn't always have to do with a 8 mistaken entry. Sometimes it is, if it's eight hours 9 on a holiday, and they really meant holiday, but it's 10 more expansive than that.</p> <p>11 Q. You were tasked with overseeing the 12 budget that's supplied to you by the comptroller of 13 Missouri State System or, essentially, you're given a 14 budget. It doesn't matter from who the budget is 15 given, but are you given a budget?</p> <p>16 A. Yes.</p> <p>17 Q. Do you find that that budget is 18 sufficient to get you through the fiscal year?</p> <p>19 A. More oftentimes than not, it is. 20 Again, I rely on, to a large extent, that 21 longstanding staff member who I trust to do that and 22 helps me oversee it. And if she tells me this looks 23 like there's going to be an issue with it, then I 24 contact the comptroller. I mean, I'm obligated to 25 contact the comptroller and say this looks like it's</p>

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<p style="text-align: right;">Page 221</p> <p>1 going to be an issue so that they can be aware of it.</p> <p>2 The last thing they want is something to go over</p> <p>3 budget. That doesn't happen a lot, but it has</p> <p>4 happened.</p> <p>5 Q. Do you know -- and it's completely</p> <p>6 fine if you don't -- if your caseload, as a district</p> <p>7 defender, is substantially different from other</p> <p>8 district defenders that you know?</p> <p>9 A. The only thing I can really speak to</p> <p>10 of is my understanding is in -- my understanding is</p> <p>11 that the -- well, I don't know for a fact, but I know</p> <p>12 that I have some belief that the management at the</p> <p>13 Kansas City trial office does not carry a caseload,</p> <p>14 and I would be fully supportive of that type of</p> <p>15 scheme because of the enormity of the staff and the</p> <p>16 things that they have to do, the turnover and all</p> <p>17 those things.</p> <p>18 Like I said, I've been encouraged to</p> <p>19 decrease or eliminate mine in the past.</p> <p>20 Q. And who was it that was encouraging</p> <p>21 you to do so, was that management or was that other</p> <p>22 district defenders as you were talking about how</p> <p>23 you're operating on a day-to-day basis? Who did</p> <p>24 those -- where did those recommendations come from?</p> <p>25 A. Only from upper management.</p>	<p style="text-align: right;">Page 223</p> <p>1 supervisor, not in the public defender system.</p> <p>2 Q. Turning to Exhibit 14, which is the MO</p> <p>3 State Public Defender Cumulative Caseload Metrics</p> <p>4 chart or grid, if you will.</p> <p>5 A. Yes.</p> <p>6 Q. Sitting here today, do you know how</p> <p>7 the cases initiated field is defined?</p> <p>8 A. I'm not an expert on this metrics.</p> <p>9 I'll be honest with you. I mean, there was a time</p> <p>10 when I looked at it more, but, no, I've never studied</p> <p>11 it, and I really probably would not be the right</p> <p>12 person to be able to -- if you want accuracy, to</p> <p>13 speak to about it.</p> <p>14 Q. Sure. And so that same statement I</p> <p>15 presume would go along with me asking about the</p> <p>16 percent of capacity. Would you have any basis of</p> <p>17 knowing whether that number is accurate or not?</p> <p>18 A. That's a totally different question.</p> <p>19 Q. Okay. How so?</p> <p>20 A. Well, management has explained to me</p> <p>21 how cases are counted. We have different views that</p> <p>22 deal with -- especially in light of the caseload cap</p> <p>23 efforts, especially in light of the Karl Hinkebein</p> <p>24 case and the Rule 4 crisis that's going on right now,</p> <p>25 but I know there's different ways to measure it, and</p>
<p style="text-align: right;">Page 222</p> <p>1 Q. As an aside, what is your relationship</p> <p>2 like with upper management?</p> <p>3 A. I think I have a cordial relationship</p> <p>4 with upper management.</p> <p>5 Q. And I remember you testifying earlier</p> <p>6 that there were some things that you would run by</p> <p>7 upper management, and if there are a lot of</p> <p>8 things that -- maybe not a lot -- there are some</p> <p>9 things that you wouldn't; that you had some</p> <p>10 discretion there. Is there any type of a policy or</p> <p>11 have you ever been instructed on these five things</p> <p>12 you need to run by upper management or not?</p> <p>13 A. Periodically we get e-mails that talk</p> <p>14 about -- it's more by subjects, you know, if this is</p> <p>15 an issue, make sure to check with me or other members</p> <p>16 of management, but it's usually subject related as</p> <p>17 opposed to an overall scheme.</p> <p>18 Q. Has workload and caseload concerns and</p> <p>19 actions such as writing a letter, is that one of</p> <p>20 those subject areas that they want you to check with</p> <p>21 them about?</p> <p>22 A. Well, let me make it perfectly clear.</p> <p>23 When it comes to my bar license and whether or not I</p> <p>24 am trying -- whether or not I'm going to comply with</p> <p>25 the rulings of professional conduct, I have no</p>	<p style="text-align: right;">Page 224</p> <p>1 one may be with the NAC standards. One may be with</p> <p>2 the Ruben Brown standards. I'm not a professional at</p> <p>3 all those. I will rely upon the stats that are</p> <p>4 computed by the Missouri State Public Defender</p> <p>5 System, but I will, quite honestly, have to rely on</p> <p>6 how they explain the different fields.</p> <p>7 Q. In your district, how would a policy</p> <p>8 become effective? Just say you wanted to, I don't</p> <p>9 know, at lunchtime there was going to be pizza for</p> <p>10 everyone every single day. That's a silly example,</p> <p>11 but how would that go about becoming effective in</p> <p>12 your district?</p> <p>13 A. I mean, unless it's something that I</p> <p>14 need to check with my managers on, unless it falls</p> <p>15 outside of my, you know -- and understand my field is</p> <p>16 relatively narrow. It's my office. I don't get to</p> <p>17 make decisions about anywhere else, but the district</p> <p>18 defenders are entrusted with providing supervision</p> <p>19 for their offices. If we were going to make a policy</p> <p>20 about various things, it would probably go out</p> <p>21 through an e-mail or I may just tell people. I mean,</p> <p>22 it depends on what sort of thing we're talking about.</p> <p>23 Sick leave, there's an e-mail that describes it.</p> <p>24 Annual leave, there's a form on a shelf.</p> <p>25 Now, understand that with our</p>

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<p style="text-align: right;">Page 225</p> <p>1 transition, there is a risk that the new people may</p> <p>2 have never gotten that e-mail. All right? So if</p> <p>3 I've got a rule, which I do, about keeping the sink</p> <p>4 clean in the kitchen that's, like, way more important</p> <p>5 than pizza, but pizza is the cause, I sometimes send</p> <p>6 that out every now and then. And I look at it and</p> <p>7 I'm, like, oh, my goodness. I've got five new people</p> <p>8 that have never seen this threat.</p> <p>9 Q. So by virtue of sending that e-mail,</p> <p>10 that is effectively setting a policy? I know we're</p> <p>11 using that word very broadly.</p> <p>12 A. Sure.</p> <p>13 Q. I'm going to start jumping around a</p> <p>14 little bit more than I already have been.</p> <p>15 A. Sure.</p> <p>16 Q. Concerning the Polycoms, is that the</p> <p>17 appropriate term?</p> <p>18 A. I think that's what they call it.</p> <p>19 Q. You had testified that -- my</p> <p>20 understanding of your testimony was that some public</p> <p>21 defenders have been surprised before, and some</p> <p>22 attorneys have been surprised before when they went</p> <p>23 to the courthouse and they didn't realize that they</p> <p>24 were not going to be actually visiting with their</p> <p>25 client. Is that a fair understanding?</p>	<p style="text-align: right;">Page 227</p> <p>1 far off.</p> <p>2 Q. So it could be more than 75 percent?</p> <p>3 A. Could be.</p> <p>4 Q. And it could be less than 75 percent?</p> <p>5 A. Absolutely.</p> <p>6 Q. I want to get a better understanding</p> <p>7 of the conversation surrounding guilty pleas and your</p> <p>8 policy or your day-to-day operation of that. My</p> <p>9 understanding of your testimony, and please correct</p> <p>10 me if I'm wrong, is that if there is incomplete</p> <p>11 discovery, you do not allow one of your assistant</p> <p>12 public defenders to simply plea out somebody without</p> <p>13 completing that discovery; is that accurate?</p> <p>14 A. That's accurate. I mean, I'm not</p> <p>15 always with them in the courtroom, but they know</p> <p>16 that's my rule.</p> <p>17 Q. And how, exactly, is completion of</p> <p>18 discovery measured?</p> <p>19 A. I'm not talking about investigation.</p> <p>20 I'm just talking about discovery. So you'll get the</p> <p>21 initial round of discovery, and you'll see first off</p> <p>22 is there anything that's mentioned in the portion</p> <p>23 that you have -- and it may be complete, but I'm</p> <p>24 always presuming it's not because of experience.</p> <p>25 Could be, though. And if you know, through</p>
<p style="text-align: right;">Page 226</p> <p>1 A. I know I have.</p> <p>2 Q. Okay. So you have --</p> <p>3 A. But you only get surprised once, then</p> <p>4 you see what's going on in the jurisdiction, and then</p> <p>5 nothing will surprise you.</p> <p>6 Q. The reason I ask is because there was</p> <p>7 some confusion on my end, potentially, of whether or</p> <p>8 not a judge had to give leave for a Polycom to</p> <p>9 appear, and the notifications that went into that.</p> <p>10 So if I'm confused, I apologize.</p> <p>11 But it has happened to you?</p> <p>12 A. Sure.</p> <p>13 Q. When you had mentioned that around 75</p> <p>14 percent -- and I believe that was a general</p> <p>15 approximation -- of the clients, it was either on</p> <p>16 your docket or within your representation are</p> <p>17 currently in custody. What was the basis for that 75</p> <p>18 percent general rule percentage?</p> <p>19 A. Just my experience, I suppose. I</p> <p>20 would -- most recently, if I were to conduct some</p> <p>21 sort of examination of most recent cases, when I go</p> <p>22 to update court dates and I check the outside of a</p> <p>23 folder and I see custody, custody, custody, it was a</p> <p>24 really informal poll I took, and that's why I said</p> <p>25 that's an estimate, but I would be shocked if it was</p>	<p style="text-align: right;">Page 228</p> <p>1 experience, that there are other things that exist or</p> <p>2 that should exist, or it doesn't take experience if</p> <p>3 you're reading through it from beginning to end and</p> <p>4 see that it references something that you don't have</p> <p>5 in your stack, sometimes it may come through a</p> <p>6 conversation with a client that says, you know, this</p> <p>7 that or the other. It may be that while the officer,</p> <p>8 the taller officer, and you look, and all you've got</p> <p>9 is one report, you become skeptical as to whether or</p> <p>10 not there's another report.</p> <p>11 So it could come from a variety of</p> <p>12 sources. A common example would be you don't have a</p> <p>13 lab result for a blood alcohol contents, blood or --</p> <p>14 for possession of a controlled substance lab report.</p> <p>15 Q. Do you have or maintain any type of</p> <p>16 checklist that would suggest when this discovery</p> <p>17 period has been completed or is it more or less on</p> <p>18 your experience and their understanding, "their"</p> <p>19 being your assistant public defenders that work under</p> <p>20 you, their understanding of your knowledge of what</p> <p>21 complete discovery is?</p> <p>22 A. Well, there wouldn't be any set</p> <p>23 checklist because there wouldn't be any one always</p> <p>24 applicable set of standards. For example, in any</p> <p>25 case, you don't know whether or not -- if you have</p>

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<p style="text-align: right;">Page 229</p> <p>1 two crimes, one of them a sexual offense, then</p> <p>2 everything is going to change because you're going to</p> <p>3 have additional potential discovery.</p> <p>4 If you got body cams, again, it's</p> <p>5 extrapolated even further. If there's surveillance</p> <p>6 from retail stores, again -- so there is no -- it's</p> <p>7 really just an analysis in order to say what's</p> <p>8 missing. And over that you may say through my</p> <p>9 experience, I bet this is there, and they just</p> <p>10 haven't given it to me. You have no idea until the</p> <p>11 client has told you, "Well, the statement I gave to</p> <p>12 the officer," and you've looked through, and you</p> <p>13 don't have the statement, that you probably should be</p> <p>14 looking for that, as well as the Miranda. So a lot</p> <p>15 of it has interaction with the client involved that</p> <p>16 would shed more light on it.</p> <p>17 Q. Something to something you had</p> <p>18 mentioned, I believe, about the probation and for all</p> <p>19 hearings, I wanted to understand a little bit more</p> <p>20 about the statement that someone with an associate</p> <p>21 degree is running the criminal justice system.</p> <p>22 A. Uh-huh.</p> <p>23 Q. What did you mean by that, just in</p> <p>24 terms of the person running those hearings or --</p> <p>25 A. I mean -- and I used to present on</p>	<p style="text-align: right;">Page 231</p> <p>1 A. I think it is.</p> <p>2 Q. At any point in time after that</p> <p>3 decision, did the central office provide a bullet</p> <p>4 point of "If you're worried about caseload concerns,</p> <p>5 here are four options for you," or any type of</p> <p>6 suggestions in what district defenders should do?</p> <p>7 A. I don't think so. I think there was a</p> <p>8 single letter or e-mail. I don't think it was beyond</p> <p>9 that. I could be mistaken, but as we sit here, I</p> <p>10 don't think so.</p> <p>11 Q. And so your decision to draft the</p> <p>12 letter and communicate with the judges, was that done</p> <p>13 solely in the vacuum of you looking at and</p> <p>14 ascertaining what Hinkebein meant for you and your</p> <p>15 staff, or were there discussions between yourself and</p> <p>16 other district defenders to come up with your game</p> <p>17 plan, if you will, or your response?</p> <p>18 A. I talked to our director. I did not</p> <p>19 call Karl, who I know from years ago. We're not</p> <p>20 close friends, but a couple of decades ago we were at</p> <p>21 the same poker party. I'm sure I lost money because</p> <p>22 I don't know the rules.</p> <p>23 In all likelihood, I would have talked</p> <p>24 to staff members. More than likely, I may have</p> <p>25 talked to other managers. Certainly talked to my</p>
<p style="text-align: right;">Page 230</p> <p>1 this back when there was time, but that's a thing of</p> <p>2 the past. Probation officer is only required to have</p> <p>3 an associate's degree. They're also allowed to carry</p> <p>4 firearms. They are, in my estimation, one of the few</p> <p>5 members of the criminal justice system that's allowed</p> <p>6 to reduce their own caseload, virtually having</p> <p>7 unfettered control over it because when they</p> <p>8 recommend revocation, and sometimes it's</p> <p>9 discretionary for the same act, they, by definition,</p> <p>10 get to reduce the work that they have to do the</p> <p>11 following Monday. That's what I mean by that.</p> <p>12 Q. Now, your support staff that work with</p> <p>13 you, are they mandated to have a bachelor degree in</p> <p>14 terms of the ones who are making determinations of</p> <p>15 indigency?</p> <p>16 A. I'm not sure what education they have</p> <p>17 or what they're required to have when they were</p> <p>18 originally hired on.</p> <p>19 Q. We're almost there.</p> <p>20 A. Sure. No problem.</p> <p>21 Q. Turning to the aftereffects of the</p> <p>22 Supreme Court decision, the Hinkebein decision, you</p> <p>23 had sent -- well, you had sat down with your staff</p> <p>24 before the memo came out from the director of the</p> <p>25 public system; is that accurate?</p>	<p style="text-align: right;">Page 232</p> <p>1 co-manager, but I chiefly listened to the oral</p> <p>2 argument at least once, and printed and read the</p> <p>3 briefs on both sides, which I found to be very, very</p> <p>4 instructive, all three of those.</p> <p>5 Q. And just for the record, who is Karl?</p> <p>6 A. Hinkebein.</p> <p>7 Q. At any point in time, have you made a</p> <p>8 decision or have you sought approval from upper</p> <p>9 management to file a Chapter 600 motion -- and that's</p> <p>10 the Statute 600.063 -- in terms of requesting a</p> <p>11 conference for a caseload or workload concerns?</p> <p>12 A. I have. I have -- permission has been</p> <p>13 granted. I just haven't had the time to do it yet.</p> <p>14 Q. And was that permission granted only</p> <p>15 after you had asked upper management, or was that</p> <p>16 something that upper management did for all district</p> <p>17 defenders, to your knowledge?</p> <p>18 A. I mean, the statute says I have to</p> <p>19 ask. That's all I concern myself with. I didn't</p> <p>20 even realize I had to ask. Once I read the statute,</p> <p>21 I realized I better ask.</p> <p>22 Q. And how long have you known about the</p> <p>23 existence of that statute?</p> <p>24 A. The Chapter 600?</p> <p>25 Q. Uh-huh.</p>

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<p style="text-align: right;">Page 233</p> <p>1 A. Which subsection are we talking about?</p> <p>2 Q. 063, concerning the hearing for</p> <p>3 workload or caseload concerns.</p> <p>4 A. I think I have a file at the office</p> <p>5 because this isn't the first time we've marched this</p> <p>6 fight of a caseload cap, and I think in that file is</p> <p>7 the Waters opinion and the -- probably the statute in</p> <p>8 response to the Waters opinion which, I believe, is</p> <p>9 the Chapter 600 we're referring to, and also the --</p> <p>10 there's legislation that, thankfully, didn't pass</p> <p>11 that sought to extinguish and privatize the public</p> <p>12 defender system that we mentioned earlier in the</p> <p>13 conversation. I think my folder talks about that.</p> <p>14 There's some other things in there, too, about the</p> <p>15 auditor's reports and that kind of stuff. I haven't</p> <p>16 touched it for a while. This Karl Hinkebein is sort</p> <p>17 of what made me go back to it.</p> <p>18 Q. Do you have a sense for why you</p> <p>19 decided to send the letter as opposed to ask for</p> <p>20 permission, and then file the relevant Chapter 600</p> <p>21 motion?</p> <p>22 A. Oh, absolutely.</p> <p>23 Q. Why?</p> <p>24 A. Do you want to hear why?</p> <p>25 Q. I do want to hear why.</p>	<p style="text-align: right;">Page 235</p> <p>1 system to appeal the finding of the judge. I think</p> <p>2 the way it's written, poorly written, the conjunctive</p> <p>3 is used, and I think we need -- and I anticipate the</p> <p>4 prosecutors will pull this in their next tool and</p> <p>5 arsenal, I think the reading of the statute requires</p> <p>6 us to gain their consent to do that. Because I</p> <p>7 think, under a strict reading of the statute, only</p> <p>8 the public defender and, not or, the prosecuting</p> <p>9 attorney authority may appeal.</p> <p>10 We don't agree about much, and we</p> <p>11 certainly don't agree that we have a caseload crisis.</p> <p>12 There are prosecutors actively working against our</p> <p>13 best interests because they know if the level field</p> <p>14 is ever close to level, they'll have to work a lot</p> <p>15 harder, and justice will be served.</p> <p>16 So I filed the -- I wrote the letter</p> <p>17 instead. It does the exact same thing. I did not</p> <p>18 give a copy to the opposing prosecutor, by choice,</p> <p>19 and I certainly didn't have to, and yet they wrote a</p> <p>20 nasty response to me and to the court, complaining</p> <p>21 about the fact that I sought relief through the</p> <p>22 letter rather than the motion. I guess we'll just</p> <p>23 have to live to see how well my motion is successful</p> <p>24 and what difference it makes.</p> <p>25 Q. Turning to Plaintiffs' Exhibit 16 and</p>
<p style="text-align: right;">Page 234</p> <p>1 A. I think the statute is poorly written.</p> <p>2 I mean, I thought that when I reviewed it, however</p> <p>3 many long ago whenever it was first crafted. It</p> <p>4 essentially said that I, the manager, needed to</p> <p>5 consult with the presiding judge, and sought</p> <p>6 permission. And, frankly, I found that to be an</p> <p>7 impractical solution, so -- and it also -- chiefly I</p> <p>8 found disappointing is that it says I could go and</p> <p>9 seek relief for a portion of my office, but not the</p> <p>10 entirety of my office, which I find to be, at a</p> <p>11 minimum, illogical, beyond that, unworkable and</p> <p>12 unfair because then I'm assuming that I must express</p> <p>13 some favoritism among the attorneys that I supervise</p> <p>14 because I can't -- I can't seek -- I mean, what I</p> <p>15 could do, I suppose, and it's unclear because it's a</p> <p>16 poorly written statute, I could divest myself of all</p> <p>17 my cases, and then seek relief for everybody in the</p> <p>18 office but me because then there wouldn't be the</p> <p>19 entire office. To what end? Everyone would find</p> <p>20 that to be peculiar and suspicious and maybe perhaps</p> <p>21 premeditated.</p> <p>22 Now, the other thing I have, and I</p> <p>23 think it's a flaw in the statute, is I think the</p> <p>24 statute, in terms of statutory interpretation, I</p> <p>25 think the statute does not allow the public defender</p>	<p style="text-align: right;">Page 236</p> <p>1 the previously marked Plaintiffs' Exhibit, I believe</p> <p>2 it's 5, do you have a sense of when these documents</p> <p>3 were created, either or, generally speaking?</p> <p>4 A. It makes sense to me that they</p> <p>5 would -- that I would have seen them if I saw them,</p> <p>6 but they look familiar and probably saw them. As I</p> <p>7 think I said before, if I saw them, I think they</p> <p>8 were -- I glanced at a database, but I don't think I</p> <p>9 printed them. I'm assuming it would -- they appear</p> <p>10 to be around the time frame of when Karl Hinkebein's</p> <p>11 oral argument and decision was rendered. I have no</p> <p>12 reason to think that they predate that, but I suppose</p> <p>13 it is possible that they do since I'm not recalling</p> <p>14 seeing them and I haven't really read through,</p> <p>15 especially, Exhibit 5 fully, I don't -- I haven't</p> <p>16 analyzed it to see if it would necessarily precede</p> <p>17 Waters or not.</p> <p>18 Q. Last two questions: At this point in</p> <p>19 time, have you ever been judicially determined to</p> <p>20 have provided ineffective assistance of counsel to a</p> <p>21 client?</p> <p>22 A. Yes.</p> <p>23 Q. On what occasions and how many?</p> <p>24 A. I think a couple. It may be more.</p> <p>25 I'm not sure. The thing I can -- the only case I</p>

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<p style="text-align: right;">Page 237</p> <p>1 could point to -- well, and I don't -- it was a</p> <p>2 Platte County case, and it was the case I referenced,</p> <p>3 or I may have referenced, but I don't know if I can</p> <p>4 think of his name right now. I know his nickname,</p> <p>5 but that won't get us very far.</p> <p>6 It was a Platte County robbery case</p> <p>7 that was a post-conviction relief hearing, and I'm</p> <p>8 not certain if the trial court deemed ineffective or</p> <p>9 if that was later at the -- on further appeal, but it</p> <p>10 dealt with the use -- and, again, it was one of the</p> <p>11 cases post-Senate Bill 5, where they had bifurcated</p> <p>12 the sentencing proceedings, and one of the</p> <p>13 allegations was -- I think it was that I should have</p> <p>14 called an expert at sentencing. And, again, this has</p> <p>15 been years, and this is just from memory, so don't --</p> <p>16 if I'm incorrect about whether or not there was a</p> <p>17 finding of ineffective, I'll defer to whatever the</p> <p>18 official court records -- but, for some reason, I</p> <p>19 recall that gentleman getting a resentencing that the</p> <p>20 appellate office handled. It was definitely out of</p> <p>21 Platte County. I think there were other occasions,</p> <p>22 but I -- I can't be certain of that.</p> <p>23 Q. Are there any judicially determined</p> <p>24 instances of ineffective assistance of counsel that</p> <p>25 have occurred to an employee that you have supervised</p>	<p style="text-align: right;">Page 239</p> <p>1 someone not to be eligible for services, but then the</p> <p>2 court appoints your office anyway; is that correct?</p> <p>3 A. That does occur, yes.</p> <p>4 Q. Do you have a -- do you have a sense</p> <p>5 of how often that occurs or what percentage of times?</p> <p>6 A. Nothing with any clarity or</p> <p>7 specificity but, again, I think there's a database --</p> <p>8 there should be a database when a case is opened</p> <p>9 whether the indigency determination is made by the</p> <p>10 public defender or by the court.</p> <p>11 Q. And I'm not looking for a specific,</p> <p>12 but just in terms of your sense, does it happen more</p> <p>13 often than not that the court appoints us anyway?</p> <p>14 A. Well, we're disappointed every time</p> <p>15 that happens because, frankly, we think there has not</p> <p>16 been -- we think we're right when we think that the</p> <p>17 person is above the poverty guidelines or that there</p> <p>18 are -- now, I will tell you that there are</p> <p>19 circumstances where the person appeals, and this</p> <p>20 happens a lot. Person appeals, and the judge will</p> <p>21 inquire or the applicant will volunteer, "I no longer</p> <p>22 have that job." Now, that may be true, that may be</p> <p>23 not true, but an applicant saying that, the judge</p> <p>24 generally appoints us without any further -- without</p> <p>25 any type of hearing or verification or inquiry by the</p>
<p style="text-align: right;">Page 238</p> <p>1 as a district defender that you can recall?</p> <p>2 A. I think so.</p> <p>3 Q. Do you have a sense of how many?</p> <p>4 A. I can't really -- any specifics, I</p> <p>5 won't be able to, but I think -- I know when that</p> <p>6 sort of thing occurs, you know, it's discussed</p> <p>7 because, frankly, because it's an appellate opinion,</p> <p>8 usually, although not necessarily. It could be</p> <p>9 remedied at the trial division, but often isn't, so</p> <p>10 it's in my memory bank, but that's about as close as</p> <p>11 it can get. I wish I could be more specific.</p> <p>12 MR. RAMSEY: No further questions.</p> <p>13 MS. SHIPMA: Okay. Let me look.</p> <p>14 THE WITNESS: Can I -- I have recalled</p> <p>15 the name of that. Can I go back to that and give you</p> <p>16 the name, if you would like it?</p> <p>17 MR. RAMSEY: If you want, yeah.</p> <p>18 THE WITNESS: Vaca, V-A-C-A, but I</p> <p>19 can't remember the first name, but if you -- that</p> <p>20 should be enough to...</p> <p>21 EXAMINATION</p> <p>22 BY MS. SHIPMA:</p> <p>23 Q. Okay. Anthony, I want to talk about</p> <p>24 the indigency determination. You had said that there</p> <p>25 are situations where your office may determine</p>	<p style="text-align: right;">Page 240</p> <p>1 judge.</p> <p>2 Q. Okay. Thank you.</p> <p>3 I want you to look back at Exhibit 15,</p> <p>4 which was your letter to the presiding judges.</p> <p>5 A. Yes.</p> <p>6 Q. Were you told by anyone in upper</p> <p>7 management that you had to write that letter?</p> <p>8 A. No.</p> <p>9 Q. Did you have to run that letter by</p> <p>10 upper management to get approval before sending it</p> <p>11 out?</p> <p>12 A. No.</p> <p>13 Q. Did you attend this past year's</p> <p>14 management training or management conference towards</p> <p>15 the end of September, I think?</p> <p>16 A. Sadly, I did not.</p> <p>17 MS. SHIPMA: Okay. That's all I have.</p> <p>18 FURTHER EXAMINATION</p> <p>19 BY MS. WILCOX:</p> <p>20 Q. I have one follow-up, and I have to</p> <p>21 make sure I heard correctly because I'm looking for</p> <p>22 clarification.</p> <p>23 I think you testified that the budget</p> <p>24 you get is sufficient for the fiscal year, like the</p> <p>25 budget you get, I guess, pays the costs that you</p>

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<p style="text-align: right;">Page 241</p> <p>1 request?</p> <p>2 A. Well, I don't really request it. The</p> <p>3 comptroller dispenses the budgets to the different</p> <p>4 offices. I only know about wee hours, and we look,</p> <p>5 and if we get -- if we have some foreknowledge that,</p> <p>6 oh, we're going to go past that during the fiscal</p> <p>7 year, we're told to tell the comptroller, alert the</p> <p>8 comptroller in advance, and I can only remember doing</p> <p>9 that a few times or through my secretary that really</p> <p>10 keeps track of those numbers, so...</p> <p>11 Now, that being said, that's my really</p> <p>12 involvement in it. Over the years, I used to have a</p> <p>13 library budget. I haven't had that for a decade,</p> <p>14 decade or a decade and a half. When I was in Saint</p> <p>15 Joe, I had a library budget. No such thing as a</p> <p>16 library budget. My telephone budget was, probably a</p> <p>17 handful of years ago, maybe five, slashed by 33 1/3</p> <p>18 percent. I don't -- I don't control that.</p> <p>19 Q. I think the clarification I'm looking</p> <p>20 for is that --</p> <p>21 A. I'm sorry. It was my postage budget.</p> <p>22 Q. -- Is that you have a budget, it pays</p> <p>23 for certain things, but the way that interplays with</p> <p>24 the caseload crisis, that's what I'm looking for</p> <p>25 clarification in, if that makes sense.</p>	<p style="text-align: right;">Page 243</p> <p>1 clarifies.</p> <p>2 I don't have any further questions.</p> <p>3 THE VIDEOGRAPHER: We're off the</p> <p>4 record at 2:35 p.m.</p> <p>5 (Deposition concluded at 2:35 p.m.)</p> <p>6 -oOo-</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 242</p> <p>1 A. Okay. Sure.</p> <p>2 Q. Sure, you get money in, and it pays</p> <p>3 for things.</p> <p>4 A. Right.</p> <p>5 Q. But are you still left in a situation</p> <p>6 where you don't have sufficient funds and resources</p> <p>7 to do the work you want to do?</p> <p>8 A. Of course. The budget only gives me</p> <p>9 money, not time. Nobody I know can create that.</p> <p>10 Q. And it doesn't give you enough money</p> <p>11 to pay for the attorneys that you think you need to</p> <p>12 do the work?</p> <p>13 A. Well, the budget that I'm given,</p> <p>14 that's -- I don't get to tinker with that dollar</p> <p>15 figure. That's salaries. I'm given a budget for</p> <p>16 things like inventory and printers and warranties and</p> <p>17 some supplies, maybe some hand sanitizer. It's</p> <p>18 just -- not translators, depositions. As far as if</p> <p>19 it were as simple as me saying I would like you to</p> <p>20 double my budget for my eight assistant public</p> <p>21 defenders, I would have done that a long time ago --</p> <p>22 Q. Okay.</p> <p>23 A. -- if I thought it would have done any</p> <p>24 good.</p> <p>25 MS. WILCOX: That helps. That</p>	<p style="text-align: right;">Page 244</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Beth A. Kaltenberger, a Certified Court</p> <p>4 Reporter for the State of Missouri, do hereby certify:</p> <p>5 That the foregoing proceedings were taken</p> <p>6 before me at the time and place herein set forth; that</p> <p>7 any witnesses in the foregoing proceedings, prior to</p> <p>8 testifying, were placed under oath; that a verbatim</p> <p>9 record of the proceedings was made by me to the best</p> <p>10 of my ability, using machine shorthand which was</p> <p>11 thereafter transcribed under my direction; further,</p> <p>12 that the foregoing is a true record of the testimony</p> <p>13 given.</p> <p>14 Before completion of the deposition, review</p> <p>15 of the transcript was requested.</p> <p>16 I further certify that I am not interested</p> <p>17 in the outcome of the action.</p> <p>18</p> <p>19 WITNESS my hand this 23rd day of December, 2017.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 BETH A. KALTENBERGER, RPR</p> <p>25 MO CCR 1335 KS CCR 1417</p>

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<p>1 Alaris Litigation Services</p> <p>2 December 27, 2017</p> <p>3 Ms. Jacqueline Shipma General Counsel Missouri State Public Defender 1000 West Nifong Building 7, Suite 100 Columbia, Missouri 65203 6 (573) 526-5212</p> <p>7 In Re: SHONDEL CHURCH, et al., vs. STATE OF MISSOURI, et al.</p> <p>8 Dear Ms. Shipma: Please find enclosed your copy of the deposition 9 transcript of ANTHONY C. CARDARELLA taken on December 7, 2017, in the above-referenced case. Also 10 enclosed is the original signature page and errata sheets. 11 Please have the witness read your copy of the transcript, indicate any changes and/or corrections 12 desired on the errata sheets, and sign the signature page before a notary public.</p> <p>13 Please return the errata sheets and notarized 14 signature page to Alaris Litigation Services, 15 Production Department, 1608 Locust Street, Kansas 16 City, Missouri 64108. 17 Thank you for your attention to this matter. 18 Sincerely, 19 20 21 22 Beth A. Kaltenberger, CCR MO #1335, KS #1714, RPR, CRR 23 Enclosures 24 cc: Ms. Gillian R. Wilcox 25 Mr. Steven Alan Ramsey</p>	<p>1 WITNESS ERRATA SHEET Witness Name: ANTHONY C. CARDARELLA</p> <p>2 Case Name: SHONDEL CHURCH, et al., vs. STATE OF MISSOURI, et al.</p> <p>3 Date Taken: December 7, 2017</p> <p>4 5 Page # _____ Line # _____ Should Read: _____ 6 Reason for Change: _____</p> <p>7 8 Page # _____ Line # _____ Should Read: _____ 9 Reason for Change: _____ 10</p> <p>11 12 Page # _____ Line # _____ Should Read: _____ 13 Reason for Change: _____ 14</p> <p>15 16 Page # _____ Line # _____ Should Read: _____ 17 Reason for Change: _____ 18 19 20 21 Page # _____ Line # _____ Should Read: _____ 22 Reason for Change: _____ 23 24 25 Witness Signature: _____</p>
<p style="text-align: center;">Page 246</p> <p>1 STATE OF) 2) 3 COUNTY OF) 4</p> <p>5 I, ANTHONY C. CARDARELLA, do hereby certify: 6 That I have read the foregoing deposition; 7 That I have made such changes in form and/or 8 substance to the within deposition as might be 9 necessary to render the same true and correct; 10 That having made such changes thereon, I hereby 11 subscribe my name to the deposition. 12 I declare under penalty of perjury that the foregoing is true and correct.</p> <p>13 14</p> <p style="text-align: center;">ANTHONY C. CARDARELLA</p> <p>15 16 Executed this day of , 17 2017, at . 18 19 20 Notary Public: 21 My Commission Expires: 22 23 24 25</p>	

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